

THE
COURT-KEEPERS
GUIDE: 47

O R,
A plain and familiar TREATISE,
needfull and usefull for the help of
many that are imployed in the
keeping of *Law dayes*, or
Courts Baron.

Wherein is largely and plainly opened
the Jurisdiction of these Courts, with the
learning of *Manners*, *Copyholds*, *Rents*, *Har-*
riots, and other *Services* and advantages
belonging unto *Manners*, to the
great profit of Lords of *Man-*
nors, and owners of
these Courts.

BY
WILLIAM SHEPPARD Esq.

L O N D O N,
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To all the Lords of Man-
nors, and owners of
Courts Leet, and Courts
Baron.

Gentlemen,

THis is now the third piece
of our Law, which by the
good hand of God I have
lived to English, and send abroad
into the world. And this, though sti-
led A help to Court-keepers, to
whom it will no doubt be very use-
full and helpfull; yet it will be, or
may be withall very profitable to
others, and most of all, to men in your
capaety, who are owners of Man-
nors and Courts: For by this
you may see the extent of the Juris-
diction of these Courts, and what you

The Epistle, &c.

may do therein; what is the dutie of your Steward, and what you may require and expect therein from him: By this you shall see clearly what the Profits and Perquisites of your Mannor and Courts are. Here is the Tenants duty, and the Lords due, and how and by what means the Lord may come by it. And now if this finde as good entertainment amongst you as my last piece did; you may perhaps ere long heare from me again upon another Subject. Mean while let it suffice, that I am resolved to be alwayes to the Common-weale, and your selves,

A true friend and

Servant,

WILLIAM SHEPPARD.



The Court-keepers Guide.

CHAP. I.

*What a Court is ; And the severall kindes
of Courts.*



Court (in a law-sense) is taken for the place where justice is judicially administred. And so it is either Spirituall, *i.e.* for spirituall causes and matters, or civill; *i.e.* for civill causes and matters. The Civill Courts are againe, either of Record; as the Parliament, the Court late called the Kings Bench, the Leet or Lawday, and many others. Or not of Record, as the County Court, Hundred Court, and Court Baron. *Co. Inst. 1 part fol. 58. 260. 117.*

We shall speake onely of the Leet and Court Baron: and first we shall say somewhat of them both together, and then we shall speak of them asunder.

B

CHAP.

Court what?

The kindes of
Courts.

CHAP. 2.

Of a Leet and Court Baron together.

He cites it as the opinion of *Brian*, not his own: which is expresse that it may be kept in any place within the Manor.

THESE Courts agree in some things, as in this. 1. They are both the Common-wealths Courts. 2. They may be kept at any place within the precinct of the Court. And yet, *Co. of Copihold. f. 60.* seems to be of another minde. 3. They were both originally granted by the King. 4. They were both instituted for the more speedy administration of justice. But in more things they differ. For 1. The Court Baron may be kept once every three weeks, or (as some thinke) oftner if it please the Lord. But a Court Leet is not kept above twice a year. 2. Court Barons did originally belong to inferiour Lords of Manors; but Court Leets did originally belong to the King. 3. The Court Baron is incident to every Manor; so that every Lord of a Manor may keep a Court Baron, but few have Leets; for inferiour Lords of Manors cannot keep Leets without a speciall Prescription or a speciall Patent for them.

Of a Court Leet.

3

them. 4. In the Court Baron the suitors are Judges, but in the Leet the steward is Judge. 5. In the Court Baron the Jury may be of lesse then twelve, but in the Court Leet never; for in a Court Leet strangers may be impannelled of the Jury, but not so in the Court Baron.

Judge.

Jury.

6. A Court Baron cannot continue without two suitors *ad minimum*, but a Court Leet may continue without any suitors. 7. The Court Baron doth not enquire of any offence against the State; But the Leet doth enquire of all offences under high Treason, Co. of Copiholds f. 60, 61.

Of some high
Treasons too,
but as felonies,
7 H. 7. 12. b.
6 H. 7. 4. b. 5.

Now we shall speake of them asunder. And first of a Leet.

a Quere is made if they may not enquire of high Treason, which was at common law: but if it were made pety treason by Statute and were felony at common law, it was enquirable as felony without question. 6 H. 7. 4. b.

CHAP. 3. Of the Leet.

THe Leet (called also a Lawday, and a view of Frank-pledge) is an ancient Court of Record, instituted for

Leet what.

B 2

refor-

Of a Court Leet.

Judge.

The nature
and originall
of it.

Co. 4. Inst. 261.
saith the Stat.
of 28 Ed. 3.
cap. 9. extends
not to such
writs upon such
omission.

reformation of publick offences or Crown matters within the precinct thereof, after the example of the Sheriffes turne. For the Leet is derived out of the Sheriffes turne, and is holden before the steward as Judge; who hath (except in some few things) the same power for the compasse and reach of its jurisdiction, which the Sheriffe hath in his Turne for the whole County. And therefore after the grant of this derivative Leet, the Sheriffe in his Turn is not to meddle within the reach of this Leet, unlesse it be in case of the neglect of this Leet; and that not then neither (as it seems) without a speciall writ: and unlesse it be in case where the Leet is forfeit into the States hands. And if the Sheriffe doe otherwise he is a trespasser. And if the Sheriffe warne any man that doth live under the precinct of another Leet, to appeare at his Court, the party may be discharged by a speciall writ. This court at first was doubtlesse by the Kings grant, but at this day it is and may be claimed by prescription. *Finches Law 246. Co. 2 part of Inst. f. 72. Co. 4. part ch. 54. F. N. B. 160.*

CHAP.

Of a Court Leet.

CHAP. 4.

Of the place wherein the Leet is to be kept.

THe Leet may be kept in any place within the Hundred, Parish or Manor of which it is: as if it be a Leet for a Hundred it may be kept in any part of the Hundred. If it be a Leet for a parish or Manor, it may be kept in any place within the parish or Manor. In this therefore it doth differ from the Sheriffes Turne, which is to be kept in the accustomed place, otherwise the Sheriffe may be punished for it by Indictment. And some think also that this Court must be kept *in certo & determinato loco.* *Mag. Charta ch. 35. Dier 151. 8 H. 7. 1. 4. Co. of Copihold f. 60. Powell* of a Court Leet. f. 22, 23.

True of the
Sheriffs Turn,
and so the Stat.

and other books, except *Co. of Copiholds*, seem to intend, and my Lord Coke *Mag. Car. fo. 72.* upon the 35. chap. saith the Statute doth not confine Leets to certain times, as it doth Turnes, and there is no reason why it should to place contrary to prescription many times.

Of a Court-Leet.

CHAP. 5.

Of the time when the Leet must be kept.

THIS Court is obtained by Grant, or Prescription; if it be gotten by grant, it must be kept according to the grant. Otherwise it is by Prescription, for a Leet may be kept at any time of the year if it hath been used time out of mind so to be kept. And the Lord of this Court is not as the Sheriffe is for his Turne bound to keep it twice a year (*viz.*) within a moneth of Easter, and within a moneth of Michaelmas. For one may prescribe to keep his Leet once or twice a year at any time of the year upon reasonable warning given, and if he can by usage prove it to be so kept, it is good enough. But if the Leet hath been used to be kept but twice a year, and at a day certain, or within a moneth of Michaelmas and Easter, and was never known to be kept at any other time, then it must be kept at that time, and cannot be kept at any other time. And if it be kept at any other time, all the Acts of the Court are *Coram non iudice* and

and void: *Co. super Lit.* 115. of *Capibold*
f. 60. 71. *Co. 2 part of Inst.* f. 72. 38 *H.*
6. 7. *Dier* 233. *Powell of a Court Leet.*
f. 21, 22. &c.

CHAP. 6.

*The persons that are bound to doe suit to
this Court Leet.*

ALl persons of menkind from twelve
year old to sixty, except religious
persons, Barons, Earles, Tenants in an-
cient demesne, and such as have Hun-
dreds of their own, that dwell within
the precinct of other Leets, are bound
to doe suit in this Court. For every
man must be within some Leet, and no
Prescription will exempt a man from it.
If therefore a man be under no parti-
cular Leet he shall be under the Sheriffes
Turne. But if a man dwell within the
precinct of another Leet, and have
lands onely within my Leet, I may not
compell him to doe service to my Leet.
And yet if he dwell sometimes in one
place, and sometimes in another, and
one of these places is within my Leet,
where he dwells at the time my Leet

Where he shall
be said to be
commorant,
where not, *vid.*
Co. 2^d Inst. 122.

is held ; in this case and at this time he must doe service at my Leet, for he may doe suit at both places at severall times. And any stranger in case of want of Jurors may be made to serve of the Jury. And not only tenants that hold of the Manor wherein the Leet is, but others that live there, and not only those that are resiants, but others may be punished there, if they there offend, and can be there met withall. *Marlb. chap. 10. 12 H.7.13. F. N. B. 160. old Book of entries 390. Powell of a Court Leet f. 20, 21, 22.*

CHAP. 7.

Of the Jurisdiction and power of the Leet and the Steward thereof. And what offences may be enquired of and punished in this Court.

In making a Jury.

Fine.

THe Steward in this Court may compell any man that doth live within the precinct of, and doth owe suit to the Leet to serve in the Jury. And in case of want of a sufficient number, he may compell any stranger to serve of the Jury, [and if he refuse, fine him for his

Of a Court Leet.

his contempt. 7 H. 6. 12. And in some speciall cases he may impannell a second Jury to enquire of the concealments of the first, and fine them for their offence. 33 H. 8. 6. 1 Eliz. 17.

The Steward of this Court may fine any man for a contempt in the face of the Court; as if a man refuse to be sworne of the Jury, or being sworne to present what he hath evidence for, or depart without giving of his verdict. Or if one being duly chosen an officer and being present in Court, refuseth to be sworne, or if an affray be made in the presence of the Court, or a Tithingman refuse to present, or a Bailife refuse to retorne a pannell; in all these and the like cases the steward of himselfe may impose a reasonable * fine on the offender, and this fine is not afferable nor traversable. But the steward cannot at this day * commit to prison any man for his contempt, nor can he now take a Recognisance, or bind any man to the good Behaviour, as heretofore he might have done, and as the Sheriffe in his Turne may doe. And yet *Co. in 4. part of his Inst. f. 263.* holdeth that he may take a Recognisance for the Peace.

7 H.

2 In punishment of a contempt.

Fine,

* Note the fine must be severall, and if the offenders be amerced jointly for joint offences, it must be severally offered. 8 rep. *Greiffy's case.*

11 rep. *Godfreys case.*

* Imprisonment. Recognisance.

7. H. 6. 12. Co. 8. 39. 11. 44. Dier 211.
233. 11 H. 6. 7. Powell of a Leet f. 32,
33. 10 H. 6. 8.

3 In making
of officers &
giving of
oathes.

In this Court the Steward might and ought to have given the oath of Allegiance, when it was in use: they have power in this Court to make and swear Constables, Tithingmen, Haywards, and such like officers. *Co. 4 part of his Inst. f. 264.*

4 In the things
wherein he
hath Conu-
sance.

Amongst the things whereof the Steward of a Leet hath Conusance, and wherewith the Jury is to be charged, some are such things as may be there enquired of, but cannot be there punished; but they are to be transmitted to the Justices of the Gaole-delivery, or Justices of the Peace. And other things are not only there to be enquired of, but there to be punished also. And these are some of them, offences at the common law, and others offences by certain Acts of Parliament, by which power is given to this Court therein. *27 H. 8. 2.*

Offences by
the common
law.

Felonies.

The things which are here only to be enquired of, and not to be punished, are felonies which were so by the common law, though now they be made
Treason

Treason, as of such as are enenies to the State; falsifie or abuse the States Coyn or Seal: So all kind of wilfull burners of houses, or barns adjoyning thereunto by night, or stacks of Corn; robbers of Churches and Chappels, takers of Doves out of Dove-houses, or young Pigeons, or Hawkes out of their nests in the night, or Fishes out of Ponds, stewes, or trunks in the night; stealers of tame Deere, marked Swans or Peacocks; breakers of prison by felons, rescuers of felons, and the like; and their Accessaries before and after the felonie done: of all these the Jury must make presentment. And this presentment is to be transmitted to Superiour Courts to be proceeded upon. *Crompt. Jur. 212. 22 Ed. 4. 22. 19 H. 6. 47. 5 H. 4. 5. 11 H. 7. 1. 14 H. 8. 18.*

This Court cannot meddle with any offence against a Statute Law, except the Statute give it power so to do. *8 H. 7. 1. 21 Ed. 4. 21.* And yet if it were an offence before, against the Common law, that doth still remain. The things whereof this Court hath perfect Conu-
sance, and that may be enquired of, and punished here in this Court, are 1. by
Com-

For the Lords
profit.
Suit of Court:

Oath of Alle-
giance,

Customes,

Waife and
stray, &c.
Franchises.

Common
Nufances.

Common law. 2. by Statute law. The offenders and offences by Common law are these.

1. The defaults of Officers and suiters in doing their suit to this Court. As if any living within the precinct of the Law day, be not returned of the Decenary, or being returned do not appear; or if any above twelve yeares of age, had lived within the Leet, and had not taken the Oath of Allegiance, he was to have been presented here. And if any such person had come to the Court, the Steward ought to have given him this oath. *If any Customes or profits due to the Lord of the Leet, be withheld from him, and by whom.* As if any treasure trove, waif, or estray, or wreck, be kept from him: Or if any claim any royall Franchise, or levie any new Franchise, or abuse any old Franchise within the Leet. *Old book of Entries, 507. 404. Stat. 18 Ed. 2. 45. Ed. 3. 27. Crompt. Jur. 213.* of all that are convict or fly for felony, or are outlawed in any Action, *Powell of Courts 160. 161.* See the charge.

2. All common and popular Nufances or grievances done to the Kings Subjects, by purprestures made in any land, wood,

The wood or water; by walls, hedges, ditch-
 es or houses, made up or broken down :
 by straitening, turning, stopping, fur-
 rounding, or otherwise hurting the
 Common wayes, bridges or waters : by
 poysoning or corrupting the Aire, by the
 laying of any carion or filth, setting up
 of houses of office, or the like : or by
 the selling of corrupt and unwholsome
 provision : or by the breaking of the due
 Assise of bread, bear, &c. by * Cottages,
 and * Inmates : by not scouring ditches,
 or not repairing highwayes and bridges,
 and the like. And for all these the offen-
 der, (be he one man or a whole Parish)
 may be amerced. And the Jury may or-
 der the reforming of them under a pain.
 But for private or particular Nufances
 to persons, or places, this Court hath
 not to do with them. Stat. 18. Ed. 2. 29
 Ed. 3. 29. 2 Ed. 6. 10. 1 Jac. chap. 19. Co.
 4. part of the Instit. f. 72. Dyer 13. old
 book of Entries, 390. 550. See the
 Charge.

3. All great affraies, outcries and
 bloodsheds, and such like popular tres-
 passes, which are trespasses by the Com-
 mon law. But not any particular tres-
 passe to one man, as beating him, or the
 like,

* 10^l the bull-
 ding, 40^l a mo-
 neth the con-
 tinuance.

* 10^l a month
 Amercement.

Notorious
 trespasses and
 breaches of the
 peace.

like, unlesse bloodshed follow; nor to one Parish; as eating up, or inclosing their Common, or the like; nor any trespassse punishable by a Statute, unlesse the Statute give Consuance thereof to this Court. *Old book of Entries*, 300. Co.9. 113. *Dyer* 234. 13. *Bro. and Fitz. Leet and Turn.* See the Charge.

Riots, Routs, and unlawfull Assemblies at the Common law are punishable in this Court. And for this the offenders are to be amerced according to discretion: this must be reasonable, and the reasonablenesse triable and avoydable, by plea or judgement of the Court in which the suit depends, 11 *Rep.* 44. 6. *Powel. of Leets* 166.

Evil members,
or persons of
ill behaviour.

4. Evill members, and persons of ill behaviours that are dangerous to their neighbours, as malefactors in Parks, such as take Doves by engines, such as are common suspected theeves, or that are the common messengers of theeves, the common drunkards, the common haunTERS of Alehouses or Taverns, not having whereon to live, night-walkers and day-sleepers, that live idley, have no estate, and yet fare well, evesdroppers, common hedge-breakers, common peace-breakers,

ers, raylers and sowers of discord between neighbours, keepers or haunters of bawdy houses, common scolds, common Barretors, common Usurers, Inne-keepers who doe commonly entertain theeves and suspicious persons, knowing or suspecting them to be so, and such as do remove bounds or land-markes between Parishes, Hundreds or Counties; but not such as remove bounds between persons onely. All these the steward of this Court heretofore might have bound to the Peace or good behaviour, but at this day he can onely by the presentment of the Jury, amerce them, or make way to have them bound to their good behaviour by a Justice of Peace, 18 *Ed.* 2. *Bro. Leet in toto Co.* 2. part of his *Inst.* f.73.27. *H.* 8.17. 4 *H.* 7.1. *Hob.rep.pl.* 311. See the Charge.

Officers.

5. Constables, Tythingmen, Haywards, Alecunners, Bayliffes and such like Officers which are chosen and sworn in this Court, if any such being chosen refuse the office and to take the oath, or accepting doth not execute his office duely, or misbehave himself therein, as if Constables and Tythingmen doe not take care of watch and ward, keeping the

the Peace, raise hue and cry and pursue it for the apprehending felons, when any felony is done; or raise hue and cry when none is done; or do not punish rogues and the like. Or Tythingmen, chiefe pledges, Surveyours of high wayes, searchers and sealers of Leather, and such like Officers as doe not their dutie 13 *Ed.* 1.4. 22 *7ac.* 5. 14 *Eliz.* 5.1 *7ac.* 9. See the Charge. *Kytch.* 12.

Disturbers of
Justice.

6. All that rescue persons or things taken in a course of law; as rescuers of persons arrested, or goods or cattell distrained, pound-breakers and the like. See the Charge.

Neglect of Instruments of
Justice.

7. Lack of stocks, pillory and tumbrill, cucking-stool, common pound. *Old book of Entries*, 390. 495. *Powell of a Leet* 156. See the Charge.

Offences in
trading.
Deceit.

8. All that use deceit in buying and selling, that sell false wares for good, especially if it be that which is to be eaten or drunk; that sell by false weights and measures, Innekeepers, Victualers, Bakers, Brewers, Fishers, Powlterers, or Fishmongers, that sell that which is unwholsome for food, or sell at unreasonable prices; Bakers and Brewers that do not keep the Assise of bread and beer, and

and Millers that take excessive toll. 2
Ed. 6. 15. 21 Jac. 21. 14 H. 8. 12. 1 Jac.
12. 5 Eliz. 8. 8 Her. 6. 5. 27 Ed. 3. 10.
Hob. Rep. pt. 163. 13 Ed. 3. 6. 13 R. 2.
18. Co. 2. part. of Inst. f. 72. 14 Ed. 4. 31.
Stat. 9 H. 8. Old Booke of Entries, 390.
See the Charge. 1. 02. 14. 14. 8. 8.

Foretallers, Regrators, and Ingrossers (it seems) may be punished in this Court by the Common Law. And Usurers, as enemies to trading *Powell of a Lect.* 101. 102. But in these and such like cases the penalty of the Statute cannot be imposed, for Stewards have no power by the Statutes, but it is punished here as an offence at the Common Law, before the Statute, which doth remain still; and for these the offender is to be Amerced. *Powell of Lects.*

But this Court cannot take Indictments of any felony for the death of a man, or in any other case where it hath not Conusance; And if it do so, it is void, and it seems the Judge may be punished for it. So neither can it take a presentment of an offence done against a Parish, or against a man.

And therefore a Presentment in this
Court for levying of gates, *Ad commun-*

sem nocumentum inhabitantium de Dale for oppression in a Common, for beating a man, breaking a hedge or the like, is void, and all the proceedings thereupon unwarrantable; and *Coram non Judice* Ca. 9. 114. 4 H. 6. 10. 22 Ed. 4. 22. 32 H. 8. 8. 41. *Ass. pl.* 30. The like is of all Presentments of any thing out of the Jurisdiction or precinct of the Court.

The offences and offenders punishable in this Court by the Statute Law are Tanners, Curriers, Shoemakers, Searchers, Sealers, by 1 Jac. 22. Such as offend about fish, by 1 Eliz. 17. Car. 4. about malt, by 2 Ed. 6. 10. 21 Eliz. 14. about Archery, by 33 H. 8. 9. about Guns, by 33 H. 8. 6. 14 H. 8. 11. about unlawfull games, by 33 H. 8. 9. about Artificers and labourers by 2 Ed. 6. 15. 14 H. 8. 12. about Musters, by 4 Ph. & M. 3. about High-wayes, by 29 Eliz. 5. 2 & 3 Ph. & M. 8. 5 Eliz. 13. about Horses, by 32 H. 8. 13. about Hostlers and Victualers, by 31 H. 8. 14. 41. 21 Jac. 21. about the price of Wine by part of 1 Jac. 25. 7 Ed. 6. 5. about Pheasants and Partridges, by 23 Eliz. 10. about tracers of Hares, by 14 H. 8. 10. about hunting in Corn, by 23 Eliz. 10. about

about Cottages and Inmates, by 31 *E-*
liz. 7. about drinking and drunkenness,
 by 1 *Iac.* 10. 4 *Iac.* 5. 21 *Iac.* 7. about
 watering of Hemp where cattell drink,
 by 33 *H.* 8. 17. about Rogues, by 14
Eliz. about Crowes, by *part of* 24 *H.*
 10. 8 *Eliz.* 15. about Horses, 32 *H.* 8.
 3. And of all these and some others,
 this Court may enquire by authority of
 these Acts of Parliament. See the Charge
 afterwards, *Co.* 2. *part of his Inst.* 263.
 The Articles to be enquired of by the
 Leet, by 18 *Ed.* 2. were enquirable
 therein by the Common Law.

The Jury in this Court may make By
 Lawes, and enquire of the breach of
 them as they have been used to do. And
 for Cawseyes, High-wayes and Bridges,
 the greater part may bind the rest with-
 out consent, 44 *Ed.* 3. 19. See chap. 39.

CHAP. 8.

*The manner and order of proceeding in
 the Leet.*

The manner and order of the pro-
 ceeding in this Court, is some-
 what after the order of proceeding in

Jury.

the Sheriffs turn, out of which it was derived. The Steward after he hath called the Court, doth swear and charge the Jurie; the which must consist of twelve at the least, and twelve will serve: *Old book of Entries, 392.*

Officers.

Presentment.

And if it be a Leet for a whole Hundred, it is fit to make some of the Jury of all parts of the Hundred: And if the custome of the place be to make two or more Juries, or one grand Jurie and divers petite Juries, it is good to observe it. And the Constables & such like Officers, must be charged also upon oath, and must Present either to the grand Jurie, and they must make it part of their Presentment, or else these Officers must Present alone; but the first is the better way. (And if twelve agree where the Jury doth consist of more, is good enough. *11. Car.B.R.*) but the Steward must see that the Presentment be good. And for this,

1. That it be in Latine, for otherwise some say it is not good: but however the Steward must turn it into Latine if it be pleadable, or given in evidence. *2. That it say, Infra Jurisdictionem hujus curie.*

the

3. Th

3. That it be certain, for if the Presentment be thus, That J.S. did turn such a water course, or stop such a way, and doth not say when nor where, this is void.

4. If it be of a Nufance, it must say, *ad commune nocumentum populi.* &c.

5. That it be made of such things whereof the Leet hath conuſance, otherwise it is not good.

6. If the Presentment be of a felony, it seems it must be put under the hands and seals of the Jurors; and by writing indented of two parts, one whereof is to be under the Stewards hand; and this must remain with the Jurie; and the other is to be under the hands of the Jurors delivered to the Steward, and by him to be transmitted to the Justices of the Peace at the next quarter Sessions, to the end that the party may be there tried thereupon. But for other matters Presented by the Jury, the Steward is to proceed upon them: For a Presentment in a Leet duely made by the Grand Jury, is said to be as Gospel, and no Traverse lieth to it, out in some speciall case, as when it doth concern freehold as if J. S. be

* *Fitz.* there saith, that Brittons opinion was contrary, that every Presentment both in Leet and Turn was traversable. Traverse.

Presented that he *ratione tenura tenetur*, to repair such a way or bridge; or when the Presentment is for not amending a way which is out of the Jurisdiction of the Court. And in these cases also he cannot put in a Traverse after the first day. But no Traverse lieth to the Presentment of a bloodshed, or the like, *Dyer* 13. And upon this Presentment of offences and no certain penalty imposed by the Jury; and so likewise for default of appearance, and other faults done in the Court, for which no certain Amercement is imposed, the Steward doth Amerce, and then it must be assented; (that is) by oath of some men sworn to that purpose it must be set down the certain summe which the offender shall pay. And this may be done either by the Jury it self for all such offences; as are within their Presentment: Or it may be by two or three of the Jury or others made assentors sworn to that purpose, according to the custome of the Court see the Oath afterwards. But the Steward himself cannot do it; and yet then needs no assenting in these following cases.

Amercement.
These defaults are usually Presented by the Jury.
Assentment.

1. When the Steward himself sets.

Fin

Fine in certain upon a man for any offence done *in facie Curia*.

Fine.

2. When the offence is done by an Officer of the Court out of Court, and Presented by the Jury, and the Steward imposeth the Fine.

3. When there is an Order made upon a certain penaltie, (whereof all the Resciants are to take notice at their perill, *11. Car. per Jones & Berckly*) and the Order is broken and presented to be broken, and the penalty forfeit.

Notice.

4. When the Jury doth Present a man for an offence done, and amerce him a certain summe for it.

5. Where the mulct in certain is appointed and set by any Statute for that offence; for in this case no other summe or punishment can be imposed. And in all these cases when the Fine or Amercement is made certain, the Steward is to extreat it; (that is) to make out Schedules and copies of the offenders names, the offence done, and the summes imposed upon them, with his Warrant annexed to the Bayliffe; (or if it be an offence against a Statute, to that Officer the Statute directeth to levie it) And the Bayliffe may by this, levie it to the

Extreates.

Debt.

Distresse.

Lords use. And for this Fine or Amercement at Common Law, the Lord may either bring an action of debt, or distrain a reasonable part of the goods, and cattell distraynable of the offender himself (but not of another) in any place in the high way, or elsewhere; and in owner or another mans custody within the precinct of the Leet (but not elsewhere;) and either sell them or put them in pound at his choice; and if the partie offer the money, the Lord must accept it, 3 H. 7. 4. 21 H. 7. 40. 2 H. 4. 24. 7 H. 6. 12. 5 H. 7. 3. Stat. 13 Ed. 1. 13. Crompr. Jur. 212. Broo. Leet in toto. Presentment, 1. 5. 27 H. 8. 2. Hob. rep. pl. 163. 47 Ed. 3. 12. Co. 8. 40. 11. 14. Old book of Entries, 390. 550. 507. 495. Pawell of Leets, f. 33. 34 &c. Co. 8. 38. 11. 32. The manner of keeping this Court, wherein this point is more largely opened, followeth.

CHAP. 9.

The manner of keeping a Court Leet.

First a Warrant must be sent to give notice of the Court, And it is good

to

Of a Court Leet,

25

to give notice enough, six dayes or more before the time ; but if it be lesse time it is sufficient in Law.

This notice must be given by the Stewards warrant after this manner.

W. S. Gentleman Steward of the Hundred [or Mannor] of *S.* To the Bayliffe of the same Hundred [or Mannor] greeting. You are hereby required to warn the Leet to be kept for your Hundred [or Mannor] [or Leet and Court Baron to be kept for the Hundred of *S.* and Mannor of *A.*] the *i* day of *April*, &c. by *9.* of the clock in the forenoon, of the same day, at the usuall place there, [or at the now dwelling house of *C.* as the case is.]

Given under my hand, &c.

W. S. Sumscalls.

The

Hundred de
Slaughter.

The stile of the Court is to be entred thus, if it be for a Hundred.

Curia viſſ. Franc. pleg. pro Hundredo de Slaughter tent. apud B. coram W. S. Gen. ſeneſcallo primo die Aprilis Anno, &c. Co. 4. part. f. 265.

If it be for one Mannor or place, thus:

Manerium de
Slaughter.

Curia viſſ. Franc. pleg. pro Slaughter, pro Manerio de Slaughter, &c. [as the case is] tent. &c.

Slaughter.

If the Leet and Court Baron be kept together, as they may be, thus:

Curia viſſ. Franc. pleg. cum Curia Baron. l. S. milit. pro Manerio de Slaughter ibidem tent. &c.

Then let the Crier make three ſolemn Proclamations, and then let him ſay after the Steward thus:

All manner of perſons that have been warned to appeare here this day, or ow Suit to this Court [or Courts] to be held here this day, come in and do your Suit; And all Officers and others, answer to your names at the firſt call, upon pain and perill that ſhall fall thereon.

Then

Then call all the Resciants, and mark every one that appears with a prick, and amerce them that make default thus: A. B. in misericordia, 6^d. and so all the rest; and then put in the margent over against their names, *Sunt Resciantes & debent Seetam ad hanc curiam & fecer. default. Ideo quilibet eorum in misericordia prout patet super eorum Capita.*

Then call all the Tythingmen of every Tything, and ask him if his Tything be there; and ask him what Law-day, Hundred sylver, or Common Fine he hath brought, and receive it.

Then call all High Constables, and Petite Constables; which done, give to every one his Oath thus:

You shall swear, you shall make true inquiry and Presentment of all such Articles as shall be given you in charge, and belong to your Office concerning the Common-wealth, and Lord of this Leet; and shall not conceal or forbear any man or matter out of favour or partialitie: nor Present any man or matter out of malice or evil will, but according to truth: So help you God. And

And if the Tything appear with the Tything man, swear them thus;

The same Oath that I. S. your Tythingman hath sworn to keep for his part, every one of you shall keep for your parts; *So help you God.*

So Ale-tasters, and other Officers, if there be any there, are to be sworn according to the custome of the place.

Then having the names in writing of the Jury, if so many be to be had, from the Bayliffe, bid the Crier make an O. yes, and bid him say thus: You good men that are returned to enquire for the Common-wealth, and the Lord of this Leet, answer to your names at the first call, upon pain of Amercement.

Then call them by name, and marke them with a prick that appear, and having a sufficient number, call the foreman to the Book, give him the same Oath as before to the Tythingman; then call the rest, three or foure at a time, and swear them as the Tything is sworn before.

Then

Then enter the Jury thus :

A. B. Jur.
 C. D. }
 E. F. } Jur.
 G. H. }
 I. K. }
 L. M. }
 N. O. } Jur.
 P. Q. }
 R. S. }

Then count them; which done, command the Cryer to make a Proclamation, and then say thus, All you that are Sworn, draw near and hear your Charge, and the Court commandeth all men to keep silence, while the Charge is in giving.

Then give their Charge to this effect.

MY Masters, you that are sworn, in every action two things are to be considered: The action it self, and the end of that action, *quò tendit*, for *sapiens incipit à fine*. In the businesse whereabouts we are, we will at this time take occasion to adde a third, which yet in order we will

will make the first, and that shall be first by what authority we doe this, and what warrant we have for it, for that in all publick busineses is also considerable: First, then for our Authority, it is from the Law, from the supreme Magistrate; yea, from God himself, who hath and doth ratifie in Heaven the Lawes and Ordinances of Magistrates agreeable to the Law of God; (whereof this is one we are now about) and requires every soul that it be subject thereunto. That this is done by authority of Law, and is agreeable to Gods Law, I thinke none will deny. This one plain Argument will prove the first, the Catholick, and Universall, and Continuell keeping and holding these Courts throughout the Kingdome in all times and ages, and that without controlment; as also certain Acts of Parliament, for the rectifying, reforming and directions of these

these Courts, besides the necessary and profitable use of them: Then that they are agreeable to Gods Law, and not besides nor against the same, is as clear as the former; for as our whole Law doth nothing else but forbid the evill, and command the good, so all the Ordinances of the Law (whereof this is one) are to no other purpose but to see this be done, to preserve the just, and to find out and punish the contrary: And this will the better appear if we consider the particulars of the things here inquirable and punishable given in charge: whereof (I dare be bold to say) there is not one that jarreth with the Law of God, but is consonant and agreeable thereunto. Secondly, for the nature and quality of the Court, we shall the better search it by the consideration of the Originall of these Courts: and the end which is to come after will tell us something more

more herein. For the Originall of this Court, our Law tells us, that all Administrations of Justice, was at the first for order sake put into the hands of the King, and men went to him as to the fountain and spring-head: But after by reason of the multiplication of People, and so of Causes, as the Realm was divided into Counties, so the power of the King was likewise divided into the Deputies of those Counties, as to subordinate Magistrates, amongst whom he was called *Capitalis Justitiarius*, and men were, as they still are, directed to them as the streams flowing from the Fountain, to fetch and draw Justice to themselves; and this Deputy is him we now call *Vicecomes*, our High Sheriffe; of whose power and office it is not our purpose to speak, but to him is the Government of the Countie committed, and for his help therein he hath two Courts assigned to him, the

the one for publique, the Sheriffs Turn, the other for private matters called the County Court : And this also by multiplication being found too great a burthen for the Sheriffes and the people too, was then subdivided further into Hundreds and Parishes, who have divided the power of these Courts unto them in this the compasse of their Precincts, and there were such as were speciall Conservators of the Peace, now called High-constables in the Hundred, Petite-constables in the Parishes: And so these Courts by Common Law have the same power within the Hundreds and Parishes as the Sheriffe hath in his Sheriffes Turn, unlesse it be in some speciall Cases. So that this Court is a power for the redressing and reforming of publique wrongs to the whole body of the Common-weal; of publique wrongs I say, for private and personall matters simply. First

D wrongs

wrongs between man and man, whether by force or fraud, are not here-
in inquirable, but for them the
County Court and Hundred is pro-
perly appointed; and therefore all
such Presentments as are onely of a
wrong to some men or place alone
are void. So that by this we see that
we have the same power here that
the Sheriffe hath in his Turn, un-
lesse it be in some speciall Cases:
and the nature both of this and that
Court are to inquire and reforme
publique injuries, and such as are a-
gainst the body of the Common-
weale.

Then for the Ends of this Court
they may be three.

1. To take notice of the Hun-
dreders, and to keep an account of
them; and therefore it may be cal-
led, the view of Frank-pledge, or the
oversight of the people, who were
all antiently called Pledges whereof
one was the chiefe; for that then
they

they were pledges one for anothers
behaviour, wherof he that we now
call Tythingman was chief.

The second end may be, that the
people may be instructed in the
Lawes of the Realme, and know
what they ought to eschew, and
what to follow.

And thirdly, and especially, for
the more speedy, easie and due exe-
cution of Justice. For which pur-
pose (as you know) we have here
inquiries and search after offenders:
A Presentment of them, and a pro-
ceeding against them. And in order
and reference to these ends, we have
charged you upon Oath to make;
yea, to make diligent inquiry: So
that you are not onely to present
what comes and is offered to you,
but you are to search about, and
that diligently for occasions; and
that as you shall find truly and
faithfully without favour or fear to
Present: wherein I doubt not of

D 2 your

your care and conscience. For me
 to enter into the learning of an
 Oath, and Arguments Divine to
 perswade you to care, and your du-
 ty in this businesse, I hope it is alto-
 gether needlesse: we live in times of
 abundance of light and know-
 ledge, and all (I hope) do know the
 Lord; yet let me say this, An Oath
 is a Sacred Ordinance of God, a
 holy Invocation of his Name, to
 witnesse the Truth of that we say or
 promise; The qualities or qualifica-
 tions of it when it is done well, is in
 Truth, in Righteousnesse and Judge-
 ment: That you omit none of the
 Truth, and that you Present no-
 thing above the Truth. Secondly,
 that you do it also with judgement,
 well knowing what ye doe. And
 thirdly, with Justice, dealing to e-
 very man his due, without any mis-
 affection of love or hatred, fear or
 favour. Though it be too common
 a fault, slightly and superficially, to
 passe

pasſe through this buſineſſe, yet I hope better things of you; that you will more reſpect the Oath of the Lord laid upon you: you will weigh the grace and favour of God to us in the injoying of theſe Courts, that we have or may have Juſtice at ſo eaſie a rate, and that you may not be charged for receiving the grace of God in vain, and abuſing his favour: I know you will be carefull; you will weigh that by the carefull and honeſt diſcharge of your dutie in this buſineſſe, God will be honoured, Law obeyed, our ſelves and others benefited: Elſe on the contrary if you be found negligent or corrupt, Gods Name ſhall be taken in vain, which he will not hold guiltleſs. And if of every idle word account be to be given, much more of every wicked and falſe Oath, the Law offended, Juſtice hindered, and your ſelves in ſoules and bodies endangered; for

the Lord will be a swift witness against the false swearer, and the Law will set her self against him.

The Articles of your Charge are like the offences and offenders you are here to inquire of, and they are of two sorts, some of them are greater, and such as this Court have no further to do with but to inquire of and Present ; you must inquire of, and Present them. The Steward must then transmit them to some other powers to be proceeded upon further ; and some of them are lesse, and such as whereof this Court hath a power of *Oier* and *Terminer* ; power not onely to inquire of, but to proceed upon, and to punish. And these also are such as this Court hath power in either by the Common Law, or by Statute Lawes ; we shall cast them all together, and give them to you in the least room and easiest way that we can.

We

We shall first give you the first sort of offences here to be enquired of, which we shall but onely touch upon; so you are to inquire of all offences which are or were Felonies by the Common Law (except about the death of a man:) and in this consideration you are to inquire of those offences, that being Treason do include Felony, or being onely Felony: and those offences that being Felonies by the Common Law, are now by some Statutes made Treasons. So you were to have inquired of, and Presented all that did imagine or endeavour the taking away of the life of the King, Queene or Prince, all that had deflowered the Queene, or wife of the Prince, or Kings eldest Daughter unmarried; so you are to enquire of any that levie war against the Kingdome, or adhere to the enemies thereof, counterfeite any of the great Seales or money, kill the

Felonic,

Justices of the one or other bench, in doing their Offices, and such like offences.

You are to inquire of all Larcenies and Felonies, in taking away of another mans goods; which is greater or lesse according to circumstance; for to rob a Church of Parish goods, is Sacriledge: To take away any thing, though but a penny, openly or secretly, from the person of another, is robbery: To breake a mans house with a purpose to rob, is Burglary; and these are great offences. But in other cases to steal a mans goods or cattle, if it be in value above twelve pence, is but an ordinary Felony; if under, it is but onely a Petite Larcenie, for which the offender is to be whipped onely, and not to be brought in danger of the losse of his life and estate, as he is for the rest. The burning of houses or barnes of Corne, out-houses adjoyning to dwelling-houses

houses in the night, is felony by the Common Law; so the felonious taking of Doves out of the Dove-house in the night, young Doves or Goshawkes out of their nests, Fishing out of Ponds or Trunkes, in the night, of tame Deere, Swans or Cignets marked, or Peacocks it seems is Felony by the Common Law: Of all these you shall inquire and Present.

So you shall inquire of the Accessaries to these offences, be they before or after the offence: And after the offence: First, either by the breaking of Prison, & getting away himself: Or secondly, by helping to convey away the Prisoner, which may be by force, as rescue or the like, or fraud: Or thirdly, by a voluntary or negligent escape of an offender: Or fourthly, by a misprison, which is the concealment of a great offender and offence; for by all these wayes a man may par-
take

Accessaries.

take of another mans offence, and so be liable to punishment.

These are the first sort of offenders, and if you shall find any such, you shall inquire and present what Lands and Tenements, goods and chattells, they had at the time of their offence committed, or at any time after.

For the Lords
profit.

In the next place you are to inquire of such offenders, and their offences which may be heard and determined in this Court. And so you are first to inquire of such things as concern the Lords profit, and the support of the Court, as of Officers, and others, that owe Suit to this Court, and have not been called, or having been called and have not appeared: Of such as having lived a yeare and a day, within the precinct of this Law day, and are not listed as a resciant; and heretofore, if they had not been sworn to the King for their Allegiance, their

Suitors.

Oath of Alle-
giance.

their Patents or Masters are to be amerced for this. Of such as withhold any Customes or services, incident to the Leet from the Lord of the Leet, as Hundred weight, Kings silver, or the like money. Of Treasure trove, *i.* Any that have found above or under ground a Treasure, the owner whereof is not known. Of Waifs, *i.* Goods stolne and left by the Felon in his strict pursuit. Of Wreck, *i.* The goods upon a Shipwrack cast into the Sea, that are come to land, the Owner being cast away. Of Estray, *i.* The tame beasts found wandring within the precinct of the Law day, and not owned by any man. Of any that claim any Royall Franchises, or abuse them within the Leet. For all these offences the offender is to be amerced according to your discretion.

Customes.

Hundred weight.

Treasure trove.

Waif.

Wreck.

Estray.

Franchises.

Amercement.

Escheats.

The escheats of all Felonies did pertain to Lords, and therefore are in-

inquirable here, you are to inquire therefore of all kinds of forfeitures to the State.

Common Nuisances.

Secondly, you shall inquire of common annoyances, and popular grievances, *i. of things done to the common grievance of many:* For as to the particular grievance of one man, or speciall grievance of one Parish, you are not to inquire in this Court; but that which is, or may be generall, and to many persons and places. And so it is either of a higher nature, as base and lewd Ale-houses, though Licensed. In-mates, *i. Such as dwell together in a Cottage within another man, though in severall rooms of the same house, passing in and out at the same doore, being poore, and not able to maintain themselves.* Cottagers, such as build new, or convert old houses into new, not laying foure acres of land to it. And such as divide and multiply

10^s. a moneth.

10^s. The erecting.

40^s. a moneth for continuance.

tiply houses that become hurtfull to the place by over pestering it with poore. Or of a lower nature. In the streets of Towns, or Common wayes, Cawseyes or Bridges leading between Towns, by stopping up the Ditches, or not scouring them, building Houses or walls to straiten, incroachment, turning, digging pits, building Houses, pales or hedges, laying blocks, or not repairing of them, or other doing to them, to the hazard or grief of the Traveller. Secondly, in the Common Waters, by stopping, turning, or corrupting them, to the hurt of them that use them. Thirdly, in the Aire, by corrupting it with houses of Office, laying of garbage, carrion or the like, if it be near to the Common high way. Fourthly, in the provision for mens bodies, when either Victualers, Butchers, Bakers, Cooks, Brewers, Maltsters, or Apothecaries do make or sell that

Victualers.
Maltsters.

that which is corrupt and not wholesome for mens bodies, as when bread or beer is made of bad Corn, malt or hops, or medicines of bad drugs or Spices, or the breadfold or offered to sale is not well baked, or beer not well brewed, or the like; or that they keep not the due Assise set down for Bread and Beer, and Ale. These are common Nuisances, whereof you are to inquire and Present.

And for these the offender may be amerced, and an Order may be made under a penaltie to reform it: and if it be a standing Nuisance by a house or wall, it may be pulled down; but for every one of these Nuisances, being *malum in se*, and against the Common Law, the offender may be amerced according to your discretion, or where any Statute hath appointed a speciall penaltie, and this Court hath Cognisance of it, he must pay that penaltie,

Amerced.

xx.

nalty, as for making bad malt upon
2. Ed. 6. 10.

If any water any hemp or flaxe
where cattle use to drink.

xx.

In the next place, you shall in-
quire of notorious and common
Trespaffes; as if any great affraies or
outcries, or any affray and blood-
shed have been made, by whom, and
with what weapons. For the wea-
pons that gave the blow, or were
drawn to break the Peace, are for-
feit to the Lord of the Leet, of Ri-
ots, Routs, or unlawfull assem-
blyes, that have beene made, and
Rapes: For these are to be punished
here, not as upon the Statutes, but
as an offence at the Common Law;
so if any levie Hue and Cry, and ap-
prehend a man without cause: and
for this, the offender is to be amer-
ced according to your discretion.

Great trespaf-
ses.

Next of all, you shall inquire of
and present the common drunkard,
the common alchouse haunter, espe-
cially

Evil members,
and persons of
ill behaviour.
Haunter of
Ale houses.

Incontinent
persons.
Barretor.

Evesdropper.

Night walker.

Scold.

cially if he spend much there, and have little : He that keepeth, or doth usually frequent a common baudy house; he that is a common Barretor, *i.* that takes parties, and moves suits, and that commonly for small matters, and taking the worst side. The railer and sower of discord between neighbours. The Evesdropper, *i.* he that doth hearken under windowes and the like, to heare and then tell newes to breed debate between neighbours. The night-walker; he that sleepeth by day, and walketh by night. The common hedge-breaker, a Rogue, vagabond, and sturdy person, that doth wander up and down. The masterlesse person that lives without means idly, without Masters, fareth well; hath nothing, and cannot give account of his life. The common Scold, he that commonly goeth in messages for theeves, or doth harbour and entertain them, know-

Of a Courts Leet.

knowing them to be dangerous and suspicious, all these may be amerced, and be bound to the good behaviour by a Justice of Peace.

You are also to inquire of, and Present, any one that hath been drunk or tipling in any Ale house; any Ale house keeper that doth sell without License, or being Licensed doth sell lesse then measure; one quart of the strong, and two quarts of the smallest for a penny: That doth suffer any to sit tipling in his own house; or if any doe tipple in an Ale house.

To remove bounds and marks between Neighbour-hoods, Hundreds, Parishes and Commons; this tends to debate, and such persons are very ill members, and may be punished here.

In the next place you shall inquire of Officers, Constables, Tythingmen, Haywards, and the like, that have refused being duely cho-

Amercement.

Good behaviour.

v^s. a time, or six houres in the stocks.

xx^s. a time.

xx^s. a time.

10^s. a time.

1 a time.

Bounds.

Officers.

E

sen

Of a Court Leet.

sen; to take upon them the Office; and take the Oath, or being sworn do not their duty, as Constables that do not their duty in keeping the Peace, watch and ward, in the pursuit of *Hue and Cry* and apprehending of Felons, and safe keeping of them when they have them; in the searching of houses every moneth for unlawfull games, in the punishment of Rogues, and in execution of the Steward and Justice of Peace; warrants against drunkards, &c. or the like: and for these offences they are to be amerced according to your discretion. For not punishing Rogues, he is to lose twentie shillings for every default, and for not executing of the Justice of the Peace, or Stewards warrant against drunkards, tiplers, &c. there is a certain punishment which must be pursued.

Amercement.

Instruments of
Justice.

Next you shall inquire whether you have the instruments of Justice, the

Of a Court Leet.



the Pillory, Stocks, Cucking-stool, and Common-Pound, all in good reparations amongst you; if not, by whose default it is; and for the lack of these, the Towneship is to be amerced according to your discretion.

Next you shall inquire of them that oppose or disturb the execution of Justice; as if any doe make any Pound Breach, and take or let out any distresse, or if any rescue be made on any Officer in the doing of his Office, to take away goods distrained, or any person arrested to the impediment of Justice, or if one let another out of the stocks, or any escape be suffered, the offender may be amerced according to your discretion.

Disturbers of
Justice.

In the next place you are to inquire of Deceits and other offences in Trade and traffique; and such as are employed therein; of all such as either make or sell deceitfull wares,

Deceit in trade
and traffique.

Weights and
measures.

Affise.

Amercement.

Forestaller,
Regrator and
Ingrosser.

or use deceit in that they sell; As if a Butcher blow up his meat, or the like. Or a Tradesman sell by by fals weights and measures, or by two; that buy by greater, and sell by lesser measures: Or if Bakers and Brewers keep not the Affise, the prices and quantities according to the writing of the Marshalse, that either sell lesse in weight or measure, or take more in price then is set down for these offences, they are to be amerced as you shall think fit: Or if Victualers or Fishers do sell at unreasonable rates: Or if any be a Fore-staller, Regrator, or Ingrosser; (that is,) doe buy any provision or other thing coming towards any Faire, or Market, or Citie, or Port to be sold, or shall agree to buy it before it be brought into the Fair or Market to be sold, or shall perswade with any to sell them, dearer, or to forbear to bring them into the Market, or buy up any provision in a Fair

Fair or Market, & sel the same again in any Faire or Market in the same place, or within foure miles thereof: Or buy up Corn, Butter, Cheefe, or other dead victuals, with intent to sell it again to advance the price thereof; these are offences against the Common Law still, and so to be inquired of here, and the offender is onely to be amerced for it here, according to your discretion.

Baker.

If any Baker in any City, Town corporate or Market Town, make or sell any horse bread, which is not of lawfull Assise, and a reasonable weight, after the price of Corn and grain in the Market adjoyning: Or if any hostler or Inholder, dwelling in any City, &c. Make horse-bread in his hostrie, or without, or not sell their horse-bread, and their hay, oats, beans, pease, provender and all kinde of victuall, both for man and beast, for reasonable gain, having respect to the prices in the Markets

- 1 Offence fined
- 2 Imprisonment one month.
- 3 Pillorie.
- 4 To be forejudged from keeping an Inne.

adjoyning without taking any thing for litter. Or if any Innholders or hostlers dwelling in any Throughfare, Town or Village (being no City, Town corporate, or Market Town where any common Baker having been an Apprentice at that trade by the space of seaven yeares is dwelling) not make it sufficient, lawfull, and of due assise, according to the said prices of Grain & Corn.

Tipler.

If a Tipler sell not by measures allowed and sealed, he may be punished by the Common Law, or upon the Statute.

Butcher.
Victualer.

If any Butcher, Cook, Fisher or other Victualer, sell any manner of corrupt victuall not wholesome for mans body.

Malster.

every quarter.

If any Malt-maker make any Barly malt, (the Monerhs of *June*, *July* and *August* onely excepted) but that it have in the Fat and floor, steeping and sufficient drying thereof three weeks at the least, and in those

those Moneths, 17. dayes at the least (without which it cannot be wholesome for mans body); Or if any mingle any Malt not being well and sufficiently made, or being made of mow-burnt or spired Barly with other good Malt, and put the same to sale.

3^s. every quarter.

If any person put to sale any Malt, not sufficiently and well trodden, rubbed and fanned, whereby there may be conveniently fanned out of one quarter half a peck of dust or more.

2^d. every quarter.

If any keep a Tavern or sell wine by retaile out of a Market, or corporate Town, or there without allowance of the head Officers.

Wines,
10^s. a day.

If any be a Tanner not brought up in the Trade, or the childe of a Tanner, or marrying a wife that hath a Tan-house and Fats.

Tanner.

If a Tanner shall use the trade of a Currier, Cordwiner or Butcher, or other using, cutting or working of leather.

Loss of the Hides.

art: If any (but Tanners and Tawers
of leather buy or agree for any
rough hides but for sheeps.

If any Tanners do not sufficient-
ly tan and dry their leather.

Currier.

If any Currier use any trade of
cutting leather, or currie in any
house, if it be in a market Town, but
his own house, or curry leather not
well tanned, and do not well curry
his leather, or shall gash any leather
in the shaving.

6^s. 8^d. a skin.

Shoomaker,
3^s. 4^d.

If any Shoomaker make any
shoes of leather not with good
stuffe, or offer to sell them on a
Sunday.

Searchers 5^l.
10^l.

Sealers 5^l.

If Lords of Leets do not choose
yearely Searchers and Sealers of
leather, or if the men chosen refuse,
or accepting, do not their dutie.

* Labourers
Conspiracy :

1, 10^l. 20. daies

Imprisonment :

2, 20^l. or pillory:

3, 40^l. or pillor-

ie, and one]

yeare.

If any * labourers conspire and
binde themselves to doe but such
and such work, or so much, or in
such a manner, and not to end what
another hath begun.

If

If any Victualers conspire, or bidde themselves to sell but at such prices.

Conspiracy of
Victualers, 10s
20. dayes im-
prisonment,
&c.

If any Millar use deceit, change the grist, or take more toll then due; he may be amerced at your discretion.

Amercement.

If any Butcher be a Tanner, or gash a hide, or water it but in *June*, *July* and *August*, or sell a rotten hide, or sell a Calf under five weeks old.

Butchers:
Tanners:

If any be a Usurer, and take more for the lone of money then his own gain; this is an offence against the Common Law.

Next you shall inquire of other matters: If any man build a Cottage for dwelling, not having laid to it foure Acres of land at least of his own free-hold and inheritance to be alwayes injoyed therewith; or if any willingly continue such a cottage; or if any place, or willingly suffer any to be made in any such cottage.

40s. a moneth

10s. a moneth

If

Highwayes:
2s. for not
choosing, &c.

10^s. a time for
the Plowes
fault.
12^d. for the
man.

Hawking:
43^s. a time.

6^s. viij^d.

x^s. a Par-
tridge.
xx^s. 4 Phea-
sant.

4 Guns, 10^l. a
shot.

If the Constables and Church-wardens do not choose Supravisors for the High-wayes.

If they have not appointed every Plow and Man his work; and if they have not done their work accordingly with the Plow and Man, you are to Present it. So if Men do not dig their ditches, and pare their trees adjoyning to the high way.

If any hawke or hunt in other mens ground against their will, in their eared or coddled Corn before it be in Strucks or Cocks: Trace or kill any Hare in the snow by dogs or otherwise.

Take or kill any Pheasant or Partridge with nets or engines in the night.

If any keepe any Greyhound, hunting dogs or Ferrets, or nets to take Pheasants not qualified.

If any use a Gun not having one hundred pound a yeare to spend, and shoot with hail shot; or if he kill

kill Pheasants, Partridges or the like Fowl therewith.

If every one have bowes and arrowes, and do use them; and if you have Buts well repaired, or else the Parish is to be punished for the Buts.

Archerie.
6s. viijd. a fault.
xxs. 3. moneths.

If Men duely called to muster, come not with their Armes, but absent themselves without any good cause: Or if Captains, muster-masters, or other Officers take rewards of their Souldiers to discharge them in time of Service; or do not pay them having received it.

Musters 40s.

If any keep houses of unlawfull games, as cards, dice, or use to play at such games.

40s. & 6s. viijd.
a time.

If any take or kill any Salmon, or Trout out of season, or take any Pickerell not being in length tenne inches in fish or more: Or Salmon not being sixteen inches or more: Trouts not being twelve inches or more: Barbell not being twelve inches or more.

Fish.

xxs. a time the fish and nets.

If

Concealment
of a Jurie,
20. 3 man.

10. A Fish.
Loss of nets:

If any Jury being charged to inquire of any of these last offences, have not Presented it.

If any within a yeare fish with any net, or the like engine, whereof every mesh is not two inches and a half wide, unlesse it be nets to take Smelts, Lotches, Mennas, Bucheads Gudgions and Eeles; or for these fish with other nets then hath been usuall.

Horfes:

Loss of them.

If any put in any stone-horse of two years old under fourteen handfulls high into any Common, or put any horse there scabbed and infectious.

Crow-nets:

Loss of them.

If any use Crow-nets, and thereby destroy those vermine by which Corn is destroyed, and any man refuse to pay his share for the taking of them.

Doves:

If any take Doves in the winter by doore-falls or engines, see below at W.

And lastly, you shall inquire of

all

Of a Court Leet.

By-lawes.

all the by-lawes heretofore made at this Court, whether any of them have been broken, and by whom, and when, and how; And of all these things you shall make a certain and perfect Presentment.

The Charge being done, cause the Cryer to make one Proclamation, and say thus :

If any man can inform the Steward, or this Inquest of any Treason, Felonie, or any other matter now given in Charge or inquirable at the Leet, let him come into the Court, and he shall be received.

If any do come in, swear him thus:

The evidence that you shall give to this Inquest, shall be the Truth, and nothing but the Truth: *So help you God.*

Then adjourn the Court thus by Proclamation.

All manner of Persons that have further to doe at this Court, may depart

Of a Court Leet.

depart at this time, and appear here again at two of the clock in the afternoon.

At which time returning, call the Court thus, after an O Yes :

All manner of persons that were adjourned over to two of the clock: or have further to do at this Court, let them come into the Court, and give attendance at their perill.

Then call for the Presentments of the Jury and Officers, and others that are sworn; If they be not ready, give them a day, and adjourn the Court till then. And at that time call it as before, and enter all the adjournments on the Court Rolls.

But if their Presentments be ready, call the Jury, and ask them whether they be agreed; and if they be all there, and say they are agreed, take them and ask them whether they be content they shall be altered in form; if they say yes, then take them in English, reade them, and amend the form if need be, and afterwards turn them into Latine.

Then swear such Officers and others

as

Of a Court Leet.



as are to be sworn, and make and swear
Afferors if any thing be to be affered,
as the ameracements for defaults and o-
thers, and let them affer them.

The Constable swear thus :

You shall well and duely execute
the office of Constable, for the Pa-
rish or Tything of A. untill another
be chosen in your roome, or you be
discharged by order of Law: *So help
you God.*

The Hayward thus :

You shall swear, that you shall
well and truly serve in the Office of
a Hayward for this yeare to come;
you shall duly and truly execute all
such Proceſſe as shall be directed
unto you from this Court; and you
shall from time to time signifie and
Present all such Pound breaches as
shall happen to be made within
your Office; and likewise you shall
Present all such cattle estrayed, as
shall usually come within your Of-
fice, and in every thing well and
truly

Of a Court Leet.

truly behave your selfe during the
time aforesaid : *So help you God.*

The Afferers thus :

You shall well and truly Taxe,
Assesse, and Affer, the severall a-
mercements here Presented, and
now to you remembred, you shall
not spare any man for favour, nor
increase upon any man for malice;
but upon every man according to
the qualitie and quantitie of his of-
fence and faults; *So help you God.*

For Allegiance, it was
thus given :

You shall swear, that from this
day forwards you shall be true and
faithfull to our Sovereign Lord the
King, and his Heires and lawfull
Successours ; And faith shall bear
of life and member, and terrene
Honour : And you shall neither
know nor heare of any ill or dam-
mage intended unto him, that you
shall not defend : *So help you God.*

And

And then discharge the Court
thus with three Pro-
clamations.

All manner of persons that have
appeared here this day, at this
Court, and have further to doe
here; Let them now come in, and
they shall be heard, else every one
may now depart and are dischar-
ged of their attendance, and not
to appeare againe at this Court,
but are to keepe their Day again
upon new warning.

And now having done with this Court,
we come to speake of the Court
Baron.

CHAP. I.
What a Court Baron is, and of a Mannor.

Court Baron
what it is.

Evidence.

Rolls of the
Court,

Prescription.

THE Court Baron is an assembly of Lord, Tenants, Steward and Bayliffe within the Mannor, to take care and inquire of Causes concerning the Mannor, to see Justice duly executed; the Acts and Ordinances there passed to be recorded in the Rolls of the Court; The which Rolls are the Evidence of all Ordinances, Duties, Customes and conveyances that do concern the Lord and Tenants, and are to be entred by the Steward, or other Officer indifferent between them, and are to remain with the Lord, that he may know his Tenants, Rents, Fines, Customes and services. *Calthrop. f. 46.*

Or (briefly) this Court is a Court that every Lord of a Mannor hath within his Mannor, as inseparably incident thereunto. And this jurisdiction was doubtlesse Originally granted by the King to Lords of Mannors, who then were great men, and by continuance is claimed and taken by prescription.

This

This Court is said to be double, the one for the triall of Titles of their Land, for the taking and passing of Estates, Surrenders, Admittances, and grants, and herein the Lord, or his Steward (as the custome of the place is) is Judge, And this is called the Copyholders Court. And the other is for the triall of Actions under fourty shillings, after the example of the County Court. And in this sense the County Court is called and accounted a kind of Court Baron: And in this Court the Free holders are Judges: Of this latter we have nought here to say, but of the former Court onely: howbeit this is still in force, and exercised within some Mannors every three weeks: And when the Court is of this double nature, the Rolls contain matters of both Courts: but the Court may be kept for Copyhold Causes, though it want Free-holders: And for the keeping hereof, there is need of a concurrence of the Lord Steward, Freeholders, Copyholders, and Bayliffe or Reeve: And these all together can make a perfect execution of Justice in all that doth belong to the Jurisdiction of the Court.

2: Courts.

Judge:

Countie
Courts.

Judges

Chancello. r.

Steward:

Judge.

Lord.

The Lord is chief to command and appoint the Steward. And he for matters of Title between the Copyholders is supream Judge in Law and Equitie; so that he occupieth two rooms, Chancelour in case of equitie, Judge in matter of right. And hath a great command also in things peculiar to himself, and yet in some cases the Steward doth exercise the place of supream Judge, between tenants in matter of title; He is in all places to direct and register, and record all the proceedings of the Court between Lord and Tenants, and between Tenants, and to be indifferent between them.

More particularly he may punish offences as not performing Customes, breach of By-lawes, i. not discharging duties, and the like.

Secondly, decide controversies about the title of Land, wherein observe this:

1. That he cannot meddle with any other Lands, but the Lands of the Manor.

2. He is not in Judging tied to the strict rules of the Law, but as a Chancelour in Chancery may upon Bill redresse matters in equity. Co. of Copihold

3. He is to make admittances.

4. He may make Licenses: wherein observe, first, he can do no more then the Steward, for he may in any Case make admittances out of the Mannor where he will, but so cannot the Steward. And he may grant a License to Alien by deed (and in or out of Court as it seemeth) but so cannot the Steward without a speciall Custome to inable, or a speciall authority from the Lord so to do. Co. of Copihold. f. 123. 124.

Steward:
Admittances.

License.

Custome.

The Freeholders which are such as have Fee-simple Land parcell of the Mannor by Deed, these are Judges in all civill Actions, and in some Cases (by speciall custome) in matters of right between Copyholders; they are also to asse and judge of amercements, and to return and certifie judgements.

Freeholders
dutie.

The Copyholders which are such as hold any of the Land parcell of the Mannor by copy of Court Roll, these are to inform and Present offences committed against the Lord within the Mannor, or otherwise according to that which the Steward shall give them in charge. And these being sworn of the Jury in this Court, are called the Homage.

Copyholders
dutie.

Bayliffes duty.

mage, being for the most part such as owe Homage to the Lord of the Fee.

The Bayliffe is to attend the Execution of the Commands and Procees of the Court, and to make return thereof when he hath executed them.

We cannot well go further to clear up these things till first we have made way thereunto, by opening some others: And because a Mannor hath such relation to a Court, that one of them cannot be, nor stand without the other; therefore we must of necessity speak something of a Mannor.

CHAP. II.

What a Mannor is, and the parts thereof.

A Mannor is Land in the hands of a Lord, of whom many Tenants (two at least) doe hold, to do suit of Court. And it is made up of two things, Demesnes and Services.

Demefnes.

The Demesnes properly are that part of the Mannor which is in the Lord or his Bayliffe or servants hands, whereof the Tenant hath not, or ever had to doe; But in a larger sense it doth comprehend

prehend all the Copyholders Lands
also.

The Services are all the Rents, Duties
and performances of the Tenants which
they are to perform and doe to their
Lord: For as a Messuage or Lands can-
not be called a Mannor without Tene-
ments thereunto belonging to pay rents,
and do services, but doth still bear the
name of a Messuage or Lands; so if a
man have Tenements which doe pay
Rents and doe Services to him, and his
Messuage or Lands whereupon to keep
Courts, and to receive his Rents and Ser-
vices; this cannot be called a Mannor,
but a Seigniorie in grosse. Services are
of two kinds, (*viz.*) by Tenure and by
Covenant: Services by Tenure are of
two sorts. As if a man at this day give
Land in tayle, or Lease land for life or
yeares, keeping the Reversion; in this
case there is a Service of Fealty incident
to this Tenure between *donor* and *donee*,
lesser and lessee: but this maketh no
Mannor. But for the further opening of
this, these things must be observed: some
reservations doe make neither Tenure
nor Mannor, as to doe Suit at the Lords
Court when please the Tenant, to beat

Services.

Seigniorie in
grosse.

The kinds of
Services.

Tenure:

or kill the Lords Tenants that doe tres-
passe in his Demesnes: to come to the
Lords Court and there to do nothing.
But if it be to come there to asse the
amercements, or the like, it may be a Te-
nure tending to support a Mannor. Some
Reservations do make a Tenure, but no
Mannor: as to amend a high way, or to
pray for the prosperous estate of the
Lord, or to finde the Lord and his dogs
meat when they hunt the Fox in such a
place. Some reservations do make both
a Tenure and Mannor: As to doe Suit
of Court to the Lords Court, upon
warning, though twenty miles distant,
to amend the high wayes within the
Mannor, to wait upon the Lord within
the Mannor for a certain time, to say di-
vine Service to the Lord and his Tenants
in the Court house before the Court sit.
Some reservations make a Service, but
no Tenure; as to wait upon the Lord
twenty mile from the Mannor, and the
like.

2. A Mannor is made by continu-
ance of time, and cannot be made at this
day by any person or means whatsoever,
not the King himself. And therefore if
a man at this day be seized of twentie
Acres

Acres of land, and enfeoffe nineteen severall persons of nineteen Acres, and keep the twentieth Acre in his hands, and reserveth suit of Court and other services to be done by these nineteen Tenants, to the Court to be kept on the twentieth Acre; albeit these estates be made by Deed indented, yet this is no Mannor, but a Tenure in grosse onely.

For a Mannor must be by prescription, and the Services time out of mind. *Calthrop. fol. 10, 11.*

For as all Services will not make a Mannor, so those Services which are by Covenant onely, or by Tenure, if they be made by agreement within the time of memory, they do not make a Mannor. Nor can the Lord albeit his Tenant be never so willing, unite two Mannors in one, or annex any other thing to his Mannor, or make that a part, which is no part of the Mannor. *Cook of Copyholds fol. 53, 2.*

Union of
Mannors.

And yet it is held, that if the Tenants voluntarily submit themselves to such an innovation, and the same be continued time out of mind without contradiction, this may make a union, and one in name and use of two distinct Mannors;

so

so if one Mannor be holden of another, these two Mannors may be united by escheat. But otherwise what they doe in one Mannor is travelable in another. *Co. of Copyholders, chap. 31. 33.*

And yet it is held that a man may at this day in some sort enlarge a Mannor by adding some Services to it: As if the Lord give parcell of his Mannor to hold by doing suit to the Lords Mill within the Mannor, the Lord may distrain for this, and it is held to be parcell of the Mannor. So if the Lord make a gift in rayle, Lease or life, or yeares of parcell of the Mannor reserving Services in grosse, by this the Services of an Antient Mannor may be increased. And it hath been thought by some, that if a Lord have a Mannor which doth extend it self into two Towns, and he grant the Demesnes and Services in one Town, that by this the grantee hath a Mannor; *Sed quere* of this, *Calthrop. fol. 11.* But this is certain that if any thing have the reputation of a Mannor, or be usually called a Mannor, though *nevera* it be no Mannor, yet it may be granted by the name of a Mannor. *Calthrop. fol. 13.* And a Mannor and Court of Copyholders,

Grant.

holders, by custome may be without any Demesnes. See after fol. Co. of Copiholds, fol. 52. 53.

Antient Demesne Mannors and Lands are certain antient Lands known by that name, and to be of that nature, which are recorded in the Book called *Doomesday*. This Land differeth not from other Lands, onely the Tenants of these Lands have certain priviledges above the Tenants of other Mannors. As see them *Coke part. 4. chap. 58*. But the Court of this Mannor is in the nature of a Court Baron, no Court of Record; a Court wherein the suitors are Judges: And the proceeding herein is as the proceedings are in other Court Barons. *Crompt. part. 230, 231.*

Antient Demesne.

Judges.

CHAP. 12.

The place wherein the Court Baron is to be held.

A Court Baron may be kept in any place within the Mannor, as the Hundred Court may be kept any where within the Hundred, and is not like in this to the Sherifes County Court, which

which in some Counties is by divers Statutes to be kept in some speciall places. But this Court cannot be kept in any place without the Mannor. And yet if a man have two or three Mannors, and time out of mind the Courts of all the three Mannors hath been kept in one of them; this may be good. Co. 1. part.

fol. 157.

CHAP. 13.

The time when the Court Baron must be kept.

THIS Court may be kept once every three weeks for the trial of Actions: And the Copyholders Court for passing estates and making admittances, may be kept as often as the Lord please.

CHAP. 14.

CHAP. 14.

What persons are bound to doe suit to the Court Baron.

ALL Freeholders of the Mannor are bound to do suit to the Freeholders Court; and all Copyholders and customary

customary Tenants to the Copyholders Court. And all such as are bound by Tenure or Covenant are bound to doe suit to both.

CHAP. 15.

The jurisdiction and power of the Court Baron, and the Steward there, and what things are to be inquired of in this Court.

FOR such an offence as a Steward in a Leet may Fine, the * Judge of this Court may Amerce: and this Amercement need not to be affered: and for this Amercement the Lord may distrain if he can prescribe for it. Co. 11. 45. Br. distress. 13. But regularly in this Court being no Court of Record, the Steward cannot do much without the Freeholders, nor can they together imprison any man, and yet *Consuetudo loci est observanda*, for in some places the jurisdiction is different from other places.

In these Courts where are ancient Freeholders, they may heare and determine any civill Action for debt or damage under fourtie shillings between parties

Fine.
* Who is intended.
Amercement.
Affered.

Prescription.

Imprisonment.

Triall of Actions.

For the suitors.

Judges.

Trial of Titles.

Judge.

parties living within the place, or without the place; for any cause arising within the place, which are entred after this manner; and therein they are to proceed according to the common Law, and example of the Countie court: And as to this part of the jurisdiction, the free suitors alone are Judges, and the Steward can do nothing without them. Co.

1. part. 38.

Copyholders may in this court trie Titles of their Copyholds, and bring recall Actions by plaints for this Land; and these Actions may be heard and determined here. And as to this part of the jurisdiction, the Lord or the Steward (as the custome of the place is) is Judge.

Also in this Court one Tenant may prefer a Bill to the Lord to be relieved in equitie against another Tenant; and herein the Lord alone is Judge.

The rest of the power of the Court lieth in making estates, taking surrenders and making admittances, and the like.

This Court being onely for the benefit of the place, and the Lord and Tenants of the Mannor; the Articles are

to inquire of such things onely as tend to that purpose. As of the defaults of suitors that owe suit to the court. *Kytch.*

fol. 54.

Of such as withhold or conceal the Lords Lands, Evidences or Franchises.

Kytch. fol. 55, 56.

Of such as incroach upon the Lords Lands or Royalties. *Kytch. ibid.*

Of such Tenants as are dead, and what is happened to the Lord thereby.

Kytch. fol. 55.

Of any forfeiture by a Tenant, Freeholder or Copyholder. *Kytch. ibid.*

Of any incroachment by one Tenant upon another. *Kytch. ibid.*

Of any Surcharger or abuser of the Common. *Kytch. ibid.*

Of any By-Lawes broken. *Kytch. ibid.*

CHAP. 16.

The manner and order of proceeding in the Court Baron.

IN case of Actions tried here, and pleas of Land in this Court, the proceedings must be much after the example of those courts out of which this is deriv'd, the

the County and Hundred courts, and according to the rules of the Common Law. And for the rest of the Jurisdiction, the Steward doth use to swear some of the Tenants (which is called the Homage) these he doth charge with divers Articles, and upon them they do Present. And upon this Presentment, the Steward is to proceed as upon the Presentment in a Leet, save onely that (as some say) the Lord cannot bring an Action of debt, but is to distrain onely for the Amercement in this Court. *H. 4. 24.*

Amercement.

Distress.
Debt.

For the manner of taking Surrenders, and making Admittances; see afterwards.

The manner of keeping this Court followeth.

CHAP. 17.

The manner of keeping a Court Baron.

First a warrant is to be made to give notice of the court, and it is good to give notice enough six daies at the least; but if it be lesse it is sufficient in Law, unlesse there be any speciall custome for

for it. This warrant may be after this manner :

To the Bayliffe of the Mannor of C.

You are hereby required to summon and warn the Court Baron of J. D. Esquire, to be holden for your Mannor of C. upon the third day of *April* next, at the usual place, (or at &c.) before me or my sufficient Deputie, and that you warn all persons that owe suit to the same Court, to be then there to do their Services. And that you your selfe be then there to make return hereof, and do your duty. Hereof fail not, &c. Given under my hand, &c.

W. S. senescall. ibidem.

Then the Style of the Court is to be entred thus :

Cheltemh.

Curiam Baron' ibid. tenet' Coram W. S.

Armiger' Senescall' Johannis Dutton

Armiger' domini Manerii predicti. se-

cund' Consuetud' Manerii predicti talibus

& anno: Old B. of Entries, fol. 120.

G

Then

Amercement.

**Distress.
Debt.**

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Cheltemh.

Curiam Baron' ibid. tent' Coram W. S. Armiger' Senescall' Johannis Dutton Armiger' domini Manerii predicti. secund' Consuetud' Manerii predicti talibus die & anno : Old B. of Entries, fol. 120.

G

Then

Then command the Bayliffe to make an O yes, and say after you thus :

All manner of Persons that have been warned to appear here this day, or have any thing to doe at this Court, draw near and give your attendance.

Then if there be any Freeholders court for entring Actions, let them say :

If any man will enter any Plaines, let them come into the Court, and they shall be received.

And if any will enter any Plaint, it must be thus :

A. B. queritur uersus C. D. de placito debiti, vel de placito transgressi vel de placito captionis & injusta detentionis auctiorum suorum, vel similia.

And hereupon the proceeding for the ending of these suits must be as it is in the Countie court, or in the Hundred court. The Defendant is to be called in by processe of Summons and Attachment and Distresse where the course is so : The Plaintiffe to declare, and the Defendant to answer as the case is, and the matter must be put to issue, and determined either by a Jury if both parties agree

agree to have it so, or the custome of the court will warrant it ; or by witnesses; or, which is the most proper triall in all these courts in ordinary cases, by wager of Law (that is) the Defendants own Oath that he oweth not the mony, and such honest men as the court shall assign to swear with him, that they are perswaded he swears truth, except it be in cases where wager of Law will not lie. And after Judgement, the debt or damage recovered is to be levied of the parties goods, which being taken, may be sold to do it. But for the method of proceeding herein, see in *Wilkinsons Treatise of Court keeping* fol. 148 and forwards; and in *Daltons Treatise of the office of a Sheriffe* fol. 157. 158, and forwards.

Then let him say, If any man will be essoyned, let him come into the court, and he shall be received.

And if any be essoyned, let it be thus entered.

I. N. Esson' & pro Sect' Cur' per J. D.

Then call all the Tenants, Freeholders, and Copyholders, and Leaseholders, that owe suit by Covenant, by their names, and apart.

Of a Court Baron.

Lib. tenent.

Castrom.
tenent.

mra ijd. } Sunt liber' tene' hu-
 A.B. } jus Cur' fecer' de-
 mra ijd. } fault, prout patet
 C.D. } super eorum Ca-
 } pira. }

Ideo uter-
 que in
 mia.

(A. B.) } 7. K. }
 (C. D.) } L. M. }
 Homag. } E. F. } Jur. }
 (G. H.) } N. O. }
 } P. Q. }

The Foremans Oath.

YOU shall swear that you as Fore-
 man of this Homage with the rest
 of your fellowes shall duely inquire,
 and true Presentment make of all
 such Articles and things as shall be
 given you in Charge; & therein you
 shall spare no man, for love, favour
 or affection, nor Present any man
 for malice, hatred or envie, but ac-
 cording as things here Presentable,
 shall or may come to your know-
 ledge, by information or otherwise:
 So shall you make thereof true Pre-
 sentment, without concealment:
 So help you God.

Then

Then call the rest of the Homage, and swear them by foure at a time thus:

The same Oath that *A. B.* your Foreman hath taken before you on his part, you and every one of you shall observe and keep of your parts:
So help you God.

Then let the Bayliffe call them by name, and bid them stand near, and hear their Charge.

Then give them their Charge to this effect:

YOU good men that are sworn;
Our worke is short, and we cannot be long about it.

Our meeting is to keep a Mannor Court, or Court Baron; we shall not stand to shew you the Antiquity; or Originall of this Court, but in a word or two by opening the nature, use and end of the Court. It is called a Court Baron, for that it is a Court incident to every Mannor, which antiently, or originally were the Courts

and Mannors of Barons. For the King, having all the Demesne Lands, with liberty to parcell it out, and reserve what Services they thought fit, and to keepe Courts within their precincts, granted great quantities of Land to the Barons and great Men; and they granted away part of this; some to one, and some to another, to hold of them by such Services as they thought fit, and kept the rest in their hands: And hereof Mannors were made, which consist of Demesnes and Services, and they exercised that power of keeping Courts within these Mannors, which hath beene continued as now we find it: So that these Courts notwithstanding at this day they are kept by prescription and custome; yet doubtlesse, Originally came by the Kings grant of them, the Fountain of Justice, who can erect and make Courts. And gave to these Lords in their Courts

Courts the jurisdiction they now have to redresse misdemeanors within their precincts, punish offences committed by their Tenants, and decide controversies within the Jurisdiction.

This Jurisdiction is double, the one part is for the triall of the Title of the Lands, for the taking and passing of estates, surrenders of estates, admittances and grants: and herein the Lord or his Steward, as the custome of the place is, is Judge. And the other is for the triall of Actions under forty shillings, and herein the Freeholders are Judges: and one of these may continue though the other be gone. So that the main end of the Institution of this Court was for administration of Justice, but so as it hath reference to the good of this place onely, and not to the publique as the Leer hath. In order to which end, you are put upon this office

and duty, being bound by your Tenure to it, and engaged by a solemn and strict Oath to be faithfull in it. Your Office lieth in your Oath, and your Oath contains your Office; which is to inquire of, and Present the things which shall be given you in Charge, which are such things onely which concern the profit and advantage of the Lord and Tenants of the Mannor. In all which according to the conditions of an Oath rightly taken you are to do in Truth, & to Present what you know to be true, and perform what you have promised and undertaken, (and to take heed of perjury) in Judgement, with due consideration of your calling to, engagement and duty in this work; and in righteousness, to do Justice impartially between Lord and Tenant, and Tenant and Tenant, and to give to every one his own without respect of persons, or any partiality: the
which

which in this work of Justice, you must carefully shun. And so we shall hold you no longer in the Porch, but lead you into the House, and shew you your work contained in the Articles of your Charge, which follow.

First, you are to inquire of such things which concern the Lords benefit; as 1. Of suitors to this Court, and for this you are to know that all that owe suit to the Court, be they Copyholders, or customary Tenants, where ere they dwell, or of what age soever they be, are to attend here or be Amerced. Where Partners have land that oweth suit, the eldest shall doe the suit, and Jointenants may agree so: but of them and of Feoffees of Land since, *Quia emptores* every one that hath any of the Land must do suit.

Item, if any of the Lords Land, Customes, Rents, Services, Franchises, Royalties, Services or Evidences

dences be concealed, or withheld from him, or Harriots, Wards, and the like without his consent, by whom, and what it is, and how long it hath been withheld,

Item, If any inchroachment be made upon the Lords Land, or upon the Common, without license of the Lord.

Item, If any Tenant take away his Hawkes, Woods, Fish, Fowle, or take any swarmes of Bees, Swans eggs, Partridge or Pheasants eggs, Hawke or Hunt in his Mannor, or do him other trespassse in his Mannor, without leave of the Lord.

If any Tenant ought to grind at the Lords Mill, and do not.

Item, If any of the Lords Tenants, Freeholders, or others be dead, whose death is not yet presented, and by what Tenure he held his land, in Knight service or in Socage, or by Copy, and what is come to the Lord thereby, and who is his

next

next Heire, of what age he is, and in whose custody, that it may be known what is due to the Lord; whether Wardship, Relief, Escheat, Harriot, or other profit hereby: If any Tenant be dead without heire generall or speciall; or if any Bastard purchase land and die without heire of his body: For in these Cases the Lord is to have the Land by Escheat.

Item, If any Tenant have Alien-
ed their Lands, when, what, and to
whom, and what is due to the Lord
thereby, by the custome; for the
Lord must know who is his Tenant,
that he may know of whom to ex-
pect his Service.

If any Tenant that holdeth by
Chivalric alieneth to defeate his
Lord of his Wardship, and other
profits.

Item, If any Tenant have com-
mitted any forfeiture, Freeholders
may forfeit by committing Felony,
in

in which Case after the King hath his yeare and day, the Lord is to have the Land, by aliening his Land in Mortmain.

Copyholders may forfeit by doing waste, letting houses fall, or be very ruinous by want of repair, or if he have two Copyholds, and impair one to amend the other; by doing Felony, by cutting down or marring Timber contrary to custome. By passing or letting their Land by Charter and Deed, for it must be by surrender. By letting for longer then a yeare and a day according to the custome. Or be a Recusant, and the Lord no Recusant. By not paying his rent, or performing his services, as suit of Court and the like, especially if he deny and refuse it. Or if any Copyholder have surrendred into the hands of the Bayliffe or Tenants to the use of another according to the custome, and the Bayliffe or Tenant do

do not Present it at the next Court: This is a forfeiture if the custome be not against it. If any rescous or pound breach be made of a distresse taken by the Lord or his Bayliffe within the Mannor, for any rent or service due to the Lord. If any remove the antient bounds between Lord and Tenant, or one Lord and another, or betweene Tenant and Tenant. And many other wayes he may forfeit his Copyhold.

Next we shall speak of the things which concerne the benefit of the Tenants : For this you are to inquire, if any take Common that hath none, or having Common keep more then his number, or the quantity of his Land, or Chase and rechase between two Farms in two Parishes, or put in Cattle nor Commonable, or inclose, dig, build upon, or otherwise abuse and oppresse the Common without License of the Lord. Or any Tenant inclose the
Land

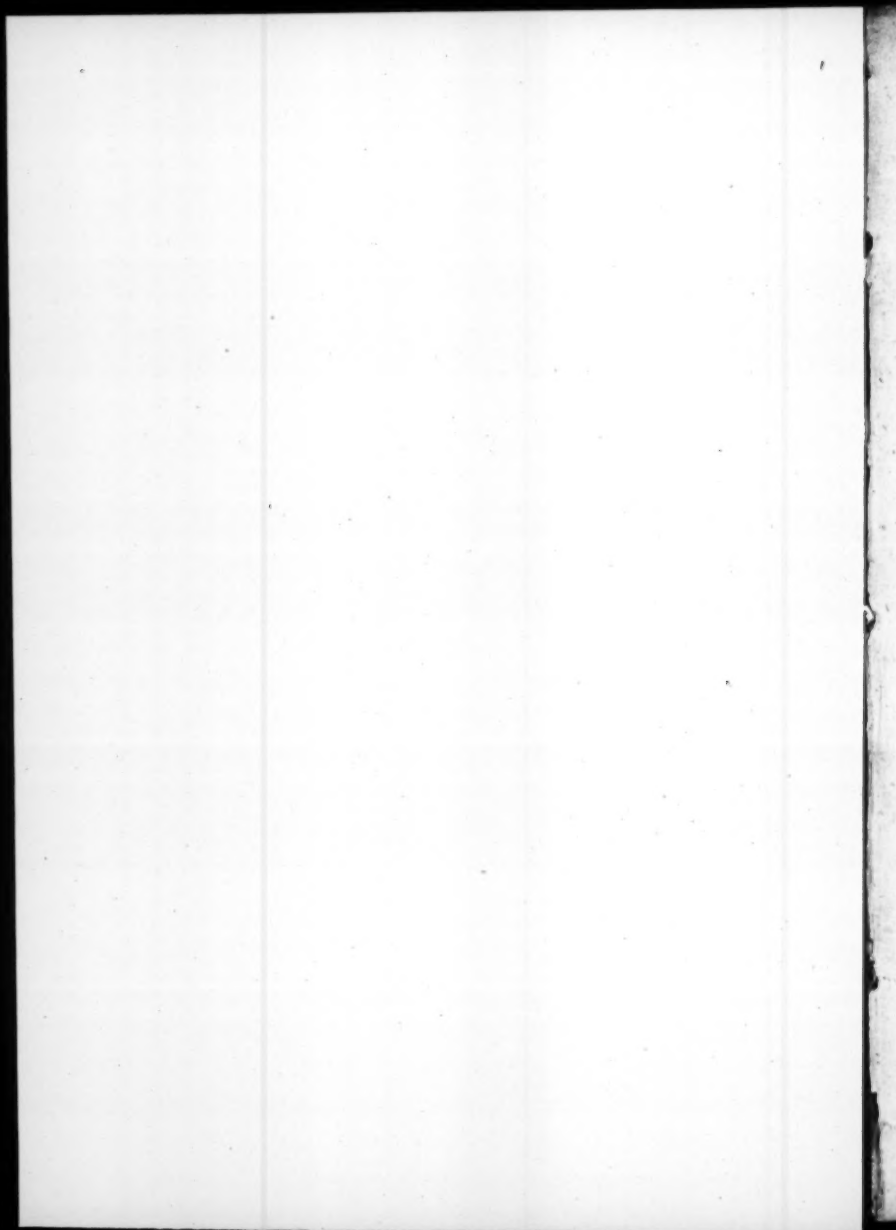
Land which ought to be in Common.

And lastly, you shall inquire of all other things by me omitted, which you know to appertain to your Charge; and of all these and the rest, make and return in to me a true Presentment by foure of the clock in the afternoon.

. Then let the Bayliffe make an OYes, and adjourn the Court till after dinner, as in the Leet. And then after dinner if any Surrenders or Admittances be to be made, or Actions to be tried, those things must be done: Otherwise call the Jury; take their Presentments, and swear two or more offerers, as in the Leet; and then discharge the Court.

Parishes, or but in (arabesque) Com-
Parishes, or but in (arabesque) Com-
 trable, or inclose, dig, build, or
 or otherwise abuse and oppress
 the Common without licence of
 the Court.

✓



CHAP. 18.

Of a Copyholder and a Copyhold.

THe Copyhold estate is that for which a man hath nothing to shew but the Copy of the Rolls made by the Steward of the Lords Court. For the Mannor is, That the Steward doth write out a Remembrance of this (amongst other things) that such a one is admitted to such an estate, and this commonly is transcribed in parchment, which transcript is called the court Roll: The copy whereof the Tenant hath under the Stewards hand; and this is all his evidence, and he can make no Title, but by this Roll.

Rolls of the Court.

The Copyholder is he which is admitted Tenant of any Lands within a Mannor, which time out of mind by use and custome of the Mannor hath been demised and demisable to such as will take the same in Fee-simple, Fee-taile, for life, yeares, or at will (as the custome is) according to the custome of the said Mannor, by copy of court Roll of the said Mannor. *West. 1. Symb. lib. 2.*

Seet.

20
Sect. 646. Coke 4. 25. Litt. Sect. 13.

So that to make a Copyhold estate, two things are requisite.

1. It must be a parcell of a Mannor.

2. It must be demised, or demise-able time out of mind, &c. And if either of these fail, the Copyhold Tenure is gone. For this cause the Tenure cannot be made at this day, unlesse it be made by Act of Parliament. Stat. 35. H.8. 13.

Co. 1 part. Inst. f. 58.

These Tenants in most places are called Copyholders and customary Tenants, but in some places they are called Tenants by the verge, base Tenants, or bond Tenants, &c. and so are the Lands called, base Land, bond Land, &c.

The grant of this Tenant is, *ad voluntatem Domini*. So the Tenant was antiently a bond man, and his Tenure a base Tenure; but time hath changed both, and now he and his estate both are so far free, that if he pay his rents and do his services according to the custome of the place, the Lord cannot hurt him or his estate. Co. 4. 29.

And if he or any other evict him; he shall have relief against them, whereof see afterwards.

If

If any of the Tenants will transfer or alien any of their Copyhold Lands, it must be done by way of surrender to the Lord or his Steward, or some of the Tenants according to the custome of the place to the use of such person who is to have it for the time agreed upon between them, and then the party is to pay his Fine, and to have it from the Lord according to the surrender, and to have it entred, and a Copy of it according to the custome of the place: And if the Lord after surrender refuse to admit, or die, or his estate end before admittance, he or his Successour shall be compelled to make the admittance. And by Deed, or otherwise such a Tenant cannot alien his Land without committing a forfeiture, no not by way of exchange with another Tenant. And if the Copyholder will devise it, he must surrender it to the use of his last will, and declare his intent. *Co. of Copyholds, f. 35.* And for this the Tenant need not alledge a custome, for this is Common Law: So neither for a surrender out of Court into the Lords hands. But to surrender to three of the Tenants, or to the Bayliffe or Reeve out of the Court, to

1. How the Copyholder may grant the land.
Surrender.

2. *Admit.*

Alienation.

H

make

Custome.

Presentment.

to make this surrender good there must be a speciall custome alledged for it. Co. 1 part. f. 59. And yet by a Deed of Release he may extinguish his right to a Copyhold whereinto another is before admitted, and hath such an estate, as upon which the Release may enter. As if a surrender be made out of Court to the use of *I. S.* and it is not duely presented according to the custome, and therefore void; yet *I. S.* is admitted accordingly, and after he that hath the right, doth by Deed release all his right to *I. S.* this will bar him, and make good the estate. *Contra* where the estate, to passe by the release, doth passe by way of enlargement. As if a Copyholder by License, Lease for yeares, and then doth release to the lessee for yeares. But I may surrender my reversion into the Lords hands, and he may grant it to the Lessee. Co. of Copyhold. fol. 100. So where no precedent estate is by admittance, as if one disseise the Copyholder, and the Copyholder release to the disseisor, these releases are void. Co. 14. 25. One Copyholder being ousted by another cannot release to him; if a Copyholder be ousted, and the Lord admit him that ousted

ousted him by his release the Copyholder may extinguish his right. *Take cap. 114.* And yet if a surrender be made out of Court upon condition and presented as absolute, and so the admittance is made, the surrenderer by release may make it good. *Co. of Copyhold, f. 101.* But if he be ousted, and the Lord admit him according to the custome, I may release to him. If a Copyholder do bargain, and sell his Copyhold land to his Lord without any Surrender, it is said this will passe it; but if his estate be an estate of Inheritance, *Contra per curiam, M. 2. Jac. B. R.*

These states are in some cases ruled according to the Common Law, and in some cases according to the custome: And therefore if such a Copyholder be put out of his land by his Lord, or any other; heretofore he had no remedy but in the Lords Court, or in Chancery, yet at this day he may have remedy against his Lord or any other by *ejectione firme*, or Trespasse, or in Chancery, as a man that hath such an estate by Deed. *Co. 4. 21. 29. 32. &c.* And if he make a Lease rendering rent, he may bring debt for it; and if one cut his trees he may

2. Consider according to Common Law.

Ejectione firme.

Estates in Fee
simple, taylor for
life.

have an Action of Trespasse.
The same words which will make e-
states in Fee-simple, Fee-tail for life,
&c. upon a Deed will make estates by
Copy: And therefore if a Surrender be
to the use of 7. S. without limitation
of any estate hereby, 7. S. shall have
an estate for his life onely, and yet by
custome in some places it is otherwise.
And if a Copiholder in Fee surrender
Habend' after his decease to the use of
his childe, in *venter S. meeie*, and the
heire of this childe; and if it die before
marriage, or full age, then to the use of
7. S. and his heires; by this the father
hath an estate for life, and the limitati-
on to the child is void; and so it seems
is the remainder also. *Co.* 4. 21, 22. &c.
For a Freeholder cannot commence in
futuro, nor one Fee depend on another.
Simpsons Cas. adjudge. Mich. 13. 7a. B. R.
And descents of this land as well as the
creation of the estate shall be guided by
the rules of the Common Law, except
there be any speciall custome in the
place to the contrary, the eldest sonne
shall inherit, *Possessio Fratris facit
sororem esse heredem*, of the land in a
Fee-simple, otherwise it is the issue of a

Co-

Copyholder in taile. This Land may be entailed by custome. *Co. of Copyhold, f. 136.* and the issue shall have a *Formodon in descender*. If one have issue, a Son and Daughter by one *venter*, and a Son by another, and the eldest purchase a Copyhold in Fee, and die without issue, the daughter shall have the Land. *Co. of Copyhold, f. 143.*

Entaile.

Custome;

Descent.

If one have a Copyhold estate to the heire of the mothers side, and he die without issue, it shall go to the heires of the mothers side, and shall rather Escheat then goe to the heires of the fathers side. But if I purchase Copyhold Land, and die without issue, and have no heires of my Fathers side, it shall goe to the heires of my mothers side. If there be father, uncle and son, and the sonne purchase this Land and die, it shall go to the uncle, not to the Father. So if there be three brothers, and the middle purchase this Land, and die without issue, the eldest shall have it. And if there be two partners or Tenants in Common of this Land, and one die having issue, his heire shall inherite, not the survivor. *Contra of Jointments. Co. of Copyholds, Sect. 59. Calthrop. f. 88, 89, 92, 93.*

3. Consider
according to
Custome.

Assets.

Dower.

Curtessie.

Discontinu-
ance.

Statute.

But in other things they differ from other Inheritances, and the rules of the Common Law; and therefore these Inheritances, except there be a speciall custome for it in the place, have not these collaterall qualities, which concern not descent, as other Inheritances have. For such Land so descended shall not be accounted Assets in the heires hands to charge him upon any Obligation, the wife shall not be endowed, the husband not Tenant by the curtessie, descent shall not take away entrie. Co. 4. 23.

A surrender made by a Tenant in taile of this Land (admitting it may be entailed) or by a husband of the Copyhold, he hath in the right of his wife, makes no discontinuance. Co. idem of Copyholds, f. 144.

If the Lord enter into a Statute, or take a wife, and after the Copyhold become void, and in the Lords hands by Surrender, forfeit or escheat, whiles it is in his hands, it is liable to this charge: But if he grant it *de novo*, according to the custome, the Copyholder shall hold his estate discharged of both. Co. 8. 63. 4. 23. The true reason is, because when the Copyholder is once admitted, he is

in

in by custome which is Paramount the grant; therefore if the Lord grant a rent charge, and then grant the Copy, yet shall the Copyholder hold the land discharged of the rent as it seemeth, though then he be not his Tenant. *8. rep. 63. b.* For no stranger can be his Tenant without his consent. *Calthrop. f. 98. Contra.* So if the Feoffee of a Mannor on condition before the condition broken, make Copyhold estates, they are good. *Co. 4. 24.* If the Copyholder acknowledge a Statute, and then surrender, the Land is not liable. *Calth. f. 98.* If Tenant in taile (without a speciall custome) or Copyholder in the right of his wife surrender, this is no discontinuance. *Co. 4. 23. Dyer. 263.* So if the Lord make a Lease for yeares of the Mannor, (excepting all woods and underwoods) and the Lessee make grants by Copy according to the custome, the Copyholder shall have wood in these words according to the custome. *Co. 8. 107.* So if the Copyholder be used to have Common of Pasture or Estovers in the Lords woods or waists, and the Lord Alien the woods or waists to another in Fee, and after make a Copyhold estate

Condition.

Discontinuance.

to be granted
to the Lord
and the Copyholder
Grant
Exception

Common.

according to the custome the Copyholder will have Common there as hath been used. *Co.* 8. 63. But in this case the custome in pleading must be laid specially, otherwise it is of a Lease for life by Deed. As long as a Copyhold of Inheritance is in the Tenants hands, it is not liable to any estate, or charge of the Lord, as *Dower, Curtesie, Elegit, Statute, &c.* but when it is in the Lords hands it is liable. *Co.* 4. 22. but a custome in this case may make it chargeable. *Calth.* f. 88, 89. 92, 93.

Charge.

CHAP. 19.

What grant of a Copyhold estate shall be esteemed good or not.

1. In respect of the Mannor of which the Land is parcell, and of the Court in which the estate is granted.

DIvers things are requisite to make a good grant of a Copyhold estate.
 1. There must of necessity be a good Mannor and Court continuing: For a Copyhold estate cannot be made without a Court, and a Court cannot be without a Mannor, and then there must be a custome for the allowance thereof, and this custome must be in the same Mannor: A Lord to give the Copyhold,
 a Te-

a Tenant of capacitie to take, and the thing to be granted which must be grantable, and may be held according to the Tenure. But for the opening of these things it must be known, touching a Mannor.

1. That a Mannor cannot be made at this day.

2. Albeit it cannot be made at this day, yet it may be marred; For a Mannor may be dissolved many ways: As first if the Court Baron (which is incident to every Mannor) be destroyed: For the Court and Mannor stand and fall together: And therefore if all the Freeholders but one escheat to or be purchased by the Lord, hereby the Mannor is destroyed: For there must be two Freeholders at least to support the Court Baron, and two Copyholders at least to support the customary Court: So if the Lord suffer all his Copyholds but one to fall in hand, or make a Feofment of all but one, hereby the Mannor is dissolved. But here this difference must be heeded; That there being (as we have shewed before) in every Mannor where are Freeholders and Copyholders two Courts; A Court of Freeholders which is by

Com-

Mannor destroyed.

Court destroyed.

Judge.

Common Law for the trial of actions, wherein they are Judges, and a Court of Copyholders which is for the surrendering and granting of estates, and making admittances, and wherein the Lord or his Steward is Judge, that one of these may stand without the other: and therefore if the Lord sell the reversion of all his Copyholds in Fee to one man, this man hath a Mannor and a Court to this purpose, and may doe all touching Copyhold estates which the seller might have done, and he that sells may doe all that belongs to the Freehold Court, as he did before. Co. 4. 26. 6. 64. Co. 1. part. 5. 3. So if the Lord make a Lease for yeares of all his Copyhold Lands, it seems the Lessee for the time of the Lease may keep Courts, and grant estates. But if the Lord make a Feoffment or Lease of one or of some of the Copyholds only; It seems this Feoffee or Lessee cannot keep a court, and therefore the Mannor as to this parcell is destroyed. If the demauns be once by the act of the party severed from the services in Fee-simple, or the Copyholds from the Mannor, hereby the Mannor is destroyed for ever. Co. 4. 26. 6. 24.

If

If one have a Mannor and grant the Moity of it to another, hereby the Mannor is destroyed by *Just. Pones opinion*. So if the Lord sell away the Inheritance of all the Copyholds to severall persons, hereby the Mannor and Court of Copyholders is dissolved.

Quere.

And if the severance be but for an instant, and without any transmutation of possession, yet the Mannor is destroyed, but by Act of the Law a Mannor may be divided: As when a Mannor descends, and is divided between two Partners, that one have one part of the Demesnes and Services, and another the other part, each of them have a Mannor and a Court.

If one Mannor hold of another ecclesiastic, they are united and continue both.

And yet if a Court Leet, waife, itray, wreck, and the like be together by Prescription, albeit the Mannor be destroyed, yet the Leet waifes, &c. continue. *Galtrop. fol. 13.*

*Quest. of the
to knowe whyle
mannor and
court and howe*

2. As a Mannor may be dissolved, so it may be suspended for a time and revived again; As if a Mannor come to Partners, and one upon the division hath all the

Franchise lost.

Suspension of
a Mannor.

the

the Services, and the iother all the Demesnes, and after one of them die without issue, so that his part cometh to the other also: by this the Mannor is revived again. *Fortior est dispositio legis quam hominis. Co. 4. 26.*

The Court must be kept on some part of that which is within the Mannor, for if it be holden out of the Mannor it is void, except by custome he having two Mannors, have time out of mind kept one Court for both. *Co. super Lit. fol. 58.*

2: In respect
of the Lord of
the Mannor,
and his estate.

2. The thing required to the making of a good grant by Copy of Copyhold Land is a good Lord: That is the party that makes the grant must be seized, (i.) he must be in possession in, and have a good right or title to the Mannor, of part whereof the estate is made. For the opening of which point, these things are to be known. That any person who may be a good grantor in a Deed, may be a good grantor of Copyhold estate; for this any person man or woman that hath a lawfull estate in a Mannor for a time, may be a good Lord, to grant Copyholds, take Surrenders, make estates and admittances according to the custome of the Mannor, notwithstanding the disabilities

ability of his person, or exilitie of his estate: And therefore it is held that a Lunatick or Man *non compos mentis*, an Infant, an excommunicate person, a person Outlawed in an Action personal; a Felon before his attainder by Outlawrie, verdict, or confession, being Lord of a Mannor may grant Copyhold estates for any time according to the custome of the Mannor, as another man may do, and the estates made by them are unavoydable. So a villain purchaser of a Mannor and Alienee in Mortmaine may make Copyhold estates till the Lord do make his entrie. *Co. of Copyholds, fol. 89.*

Non compos mentis.

Infant.

Outlaw.]

Felon.

A Tenant in Tayle for life, yeares in Dower, by the curtesie, by Statute or Elegit of the Mannor, may make Copyhold estates, as well as a Tenant in Fee-simple. So may a Tenant at will of a Mannor by Copyhold, or at Common Law; and this of Copyholds in reversion as well as Copyholds in possession: And therefore if a Tenant for life of a Mannor grant a Copy in reversion according to the custome, and die before the Copyholder; this is a good Copy in reversion against all the succeeding Lords, Adjudge 29 Eliz.B.R. Sir Peter Carew's Case.

Lessee for life, yeares, or at will.

If

If one seized of a Mannor for life; wherein are Copyholds of Inheritance, and a Copyholder doth surrender to the use of a stranger in Fee, the Lord may grant and admit accordingly, and this will bind him in reversion, but if the Copyhold be onely grantable for lives, it is said then, the Lord upon surrender cannot grant more then for the life of the granter; but if the Lord of a Mannor for or during the minority of a Ward, of which the Copyhold are demisable for three lives successively and not severally, if in this case the Copyholder dieth, the Lord may grant it being void for three lives at his pleasure, and this shall bind him in the reversion, or his heire at full age. *Galtrop Read. 50*

If a Copyholder in Fee surrender to the use of the Lord for life the remainder to a stranger in Fee, or keepeth the reversion to himself, the Lord cannot grant this in Fee by Copy. *Nemo potest plus juris in alium transferre quam ipse habet.*

So may a Feoffee or Lessee of a Mannor on condition, till the condition be broken. And yet a Lease for life by Deed in this case will be avoyded: And it is held

Quare.

Grantee on condition.

held by some, that if a Lease be made for life on condition, and the Lessee after the condition broken, and before entrie of the Lessor make Copyhold estates, that these are good, because this Lease is not void, but voydable at the pleasure of the Lessor. *Coke of Copyhold*, 89.

If the Feoffee or Lessor after the condition broken keep court, and make Copyhold estates, these are good, for the keeping of the Court is an entrie in Law. *Calkecrops Read.* 94.

If Feoffee of a Mannor on condition or enfeoffe another of it, the next day, the same day after he hath the Mannor make Copyhold estates, they are good; for it sufficeth if he be *Legitimus Dominus pro tempore*. But if a Tenant for life of a Mannor make a Lease for yeares of it, and dieth, and then the Lessee for yeares maketh Copyhold estates, these are avoydable by the first Lessor: So if a Lessee for yeares of a Mannor grant a Copyhold in reversion, and before the reversion happen the Terme is expired, the grant is void, and so it is if the Lessee surrender his Terme, and before the Lease should have ended, the reversion hap-

Gardein in
Chivalrie,

happeneth, yet the grant is not good.
Co. of Copyhold, 88.

Husband and
Wife.

A Gardeine in Chivalrie that hath a Mannor of the wards may make Copyhold estates upon it. The Husband and wife within a Mannor, he hath in right of his wife, but not the wife alone may make Copyhold estates, nor may the Husband alone (as it seemeth) make estates.

Devisee.

If the Husband and Wife in Frank marriage make Copyhold estates, and they be after divorced, the estates made before the divorce are good; so if the wife be after divorced for Infancy.

If one seised in Fee of a Mannor by his will in writing, devise that his Executors shall sell or make Copyhold estates according to the custome for payment of his debts or the like, they may make good estates accordingly. *Co. upon Lit. 58.* and yet if the Lord devise that his friends shall keep Courts, or make Copies and no more, this is not good. *Calthrop. fol. 95.*

So if one die seised of a Mannor, having a Daughter, his Wife privily with childe of a Son, the Daughter may make Copyhold estates till the Son is born.

A

A Corporation, Bishop or Prebend Corp^s polittick.
seised of a Mannor, may make Copyhold
estates.

If a Parson that hath a Mannor after
Institution, and before Induction make
Copyhold estates, it seemes these are not
good; so if after Induction he doe not
reade the Articles, and he be after re-
moved for this. But if he be deprived
after for any crime his grants before are
good. *Co. of Copyholds* f. 89.90.

Parsons,

If the Lord acknowledge a Statute,
and after make a Copyhold estate, and
then it is extended, this will not hurt
the estate. So if the Lord take a Wife,
and then make copyhold estates, & then
dieth, the Wifes dower will not hurt the
estate, though she be endowed of the
Mannor. And yet if an heire after the
Lords death make Copyhold estates,
and after the Mannor is assigned to his
Wife, she may happily avoid this. *Co.
of Copyholds* 84.

Tenant by
Statute.

Tenant in
Dower.

If the Lord make a Feoffment, in Fee,
Lease for life, or yeares of all his Copy-
hold, the Feoffee or Lessee may make
Copyhold estates, take Surrenders, Ad-
mittances, &c.

But if the Lord grant the reversion of

one Copyhold, neither he nor the grantee, nor both of them together are able to grant any Copyhold estate of this Land.

If the Lord release all the Services of the Freeholders of the Mannor, or all the Freeholders escheat, yet the Lord doth continue a good Lord, and able to make Copyhold estates of the Copyhold Lands.

In all cases where the Lord may make Copyhold estates *de novo*, he may take Surrenders, and make Admittances.

Disseisor, Abator.

But in these cases and these persons a Disseisor, Abator or Intruder in a Mannor, the Heire or Feoffee of a Disseisor, Grantee of a Tenant in tayle, one that holdeth after his estate is ended as a Feoffee or Lessee upon condition, after the condition is broken, one that hath no estate at all, or no good estate, or the Copyhold is destroyed, these cannot make any Copyhold estate by way of voluntary grant, or take Surrenders, and make new grants accordingly.

Admittances.

And yet it is thought that a Disseisor of a Mannor, or any such Lord that hath a possession onely of a Mannor, may make Admittances upon descents, or do any

any such like Act, and that this will bind him that hath right. Co. 4. 27. 8. 63. 64. 1 part. 58. 74. Calthrop. f. 98. 94. 90. 91. Co. of Copyhold 36. 86. 87. Dyer 375.

And yet if the custome be destroyed by granting away the Reversion, or where there is one Copyhold onely left, in this case he cannot make Admittances; or doe any thing as Lord. Co. 4. 27.

To make a good grant of Copyhold Land, there must be a good Steward of the Court wherein the estate is granted. And as touching this point, these things are to be known.

1. Any man may be a Steward: And therefore if an Infant, Lunatick, *non compos mentis*, outlawed, or excommunicated person, be made Steward: all Acts that he doth according to his Office are good.

2. He may be retained by word, as well as by Patent; otherwise it is if it be a Stewardship of the Kings Court, And any colourable authority may be sufficient to make a man a Steward to this purpose; yea it is held that a Copyhold granted by an under-Steward without authority from the Lord or high

1 In respect of the Steward of the Mannor. And of the Steward of a Court.

Lunatick,
Infant.
Outlaw;

Steward is good. Co. 4; of Copyhold 126.
27. Calthrop. f. 73.

3. His authority is derived wholly from the Lord, whose person he doth represent, and under him in his absence he is Judge of the Court.

Judge.

4. He must do all in the Lords Name: As if he take surrenders, make Grants or Admittances, or give license to alien, where he hath a speciall power from the Lord, or is enabled by speciall custome so to doe; he must do this in the Lords Name. *Co. of Copyhold* 125.

Licenses.

5. The Steward cannot doe so much as the Lord himself; for the Lord himself may make Grants or Admittances in what place he please, without as well as within the Mannor; but the Steward cannot do so without the Mannor. And the Lord may give license to his Tenant to alien his land by Deed. But it is doubted whether the Steward can so doe or not in Court without a speciall custome of the place, or a speciall authoritie from the Lord to enable him thereto. *Co. of Copyhold* f. 124.

Admittances.

License.

Forfeiture of Office.

6. This Office may be forfeit many wayes, 1. By Abuser; as if the Steward burn the Court Rolls, or be corrupt in Ju-

Judicature or the like. 2. Nonuser; as when he is bound by his Patent to keep Court at certain times of the yeare without request, and the Lord be prejudiced by this omission. 3. Refuser; as if he be bound to keep court upon demand, and do not albeit the Lord have no prejudice by it, yet it is a forfeiture. *Co. of Copyhold. f. 129.*

7. The Steward may appoint an under-steward. See for this, *Co. of Copyhold f. 132.*

Vnder-steward.

Any one that may be a good granter in a Deed. at common Law may make a good Surrender, or grant of Copyhold Land; and as to this point these things are to be known. 1. Any body corporate, or politique, being Lord may make a Grant, or being Tenant may make a Surrender of copyhold Land. 2. Grants by Lords, and Surrenders by other Tenants, as Felons before Attaindor, Bastard, Hereticks, Leapers, deaf, dumb, or blinde men, are good. 3. He that is not a good granter, cannot make a good grant or surrender of Copyhold Land without a speciall custome to enable him thereunto. And hence it is, That Surrenders made by Infants, Aliens,

4. In respect of the person which doth make the grant or surrender.

Lord or Copyholder.

Felon.
Bastard.
Hereticks,
Leapers, &c.

Infants.
Alien.

Ideots, &c.

Feme covert.

Jointenant.

§ In respect of
the person to
whom, or to
whose use it is
made.

Ideots, such as are born deaf, dumb and blinde, and women covert without their Husbands are not good: And yet it is held that a woman covert being joynt Tenant with another may surrender her own part to the use of her Husband. But I doubt much of this. *Co. 4. 26. 27. Co. 1 part. f. 42. of Copyholds f. 90. Calth. f. 93. 4.* A woman covert cannot surrender with her Husband, but she must be first examined by the Lord or his Steward, and this cannot be by the Tenants. *Calth. f. 86. 87.* 5. Such persons as may grant or surrender, cannot grant more then they have. And therefore if the copyholder be a Jointenant, he can grant but his own part; he that is copyholder for life onely, can surrender but for this life. And yet if there be two Jointenants of a Mannor, and a copyhold elcheat, and one of the Lords grant this copyhold alone; this is good to bind his companion. *Co. of Copyholds f. 91.*

Any one that may be a good grantee by Deed, may be a good grantee by copy, and a good copyholder. And herein these things are to be known. 1. A surrender or grant of copyhold Land may be made to a Lunatick, Bastard, man

de

de non sane memorie, person attaint of Felony, Major and Comminaltie, Infant, outlawed, or excommunicate person, bondman, or feme covert: But a Monk or Frier cannot be a copyholder. And it is doubted whether an Alien born, may be a good copyholder or not. *Perk. Sect. 52. Co. of Copyhold 97. Calthrop. f. 52.* 2. The surrender to the use of a feme covert is good, till her Husband disagree to it. 3. In case of an Infant or feme covert as to the Lords service, for the Infant, it must be done by the Garder, or Prochein Amy, and for the Wife by the Husband. 4. The Lord shall retain the Land of the Ideot, or Lunatick, till he come to himself: So some say for the Infants Land till he be of age. *Calthrop. f. 52. 65.* 5. A surrender may be of copyhold Land to the use of the Lord himself, and he may have a copyhold to his own use. *Co. of Copyhold f. 94. doubted by Calthrop. f. 52.* 6. The Husband may surrender to the use of his Wife, and by a speciall custome the Wife may surrender to the use of her Husband, *Co. 4. 21. 30. of Copyhold 94.* 7. One Jointenant may surrender to the use of another Jointenant. 8. A surrender may be

Non compos mentis, &c.

Feme covert.

Lunatick.

Infant.

Husband and Wife.

Ioyntenant.

Uncertainty.

Attorney.

Jointenants.

6 In respect of
the place where
it is done.

7 In respect of
the thing gran-
ted.

of copyhold Land to the use of him that shall be Heire of *7. S.* or the next childe of *7. S.* or next wife of *7. S.* or to him that *7. S.* shall name, is good : for nothing passeth till admittance. Otherwise it were of such a grant by Deed. *Co. of Copyhold. f. 97. 98. Quare.* And a surrender to the use of the right Heires of *7. S.* being alive is void. 9. A good grantee may take by Attorney. *Co. of Copyhold f. 95.* 10. A grant of copyhold Land may be to two or more, and they shall be Jointenants. *Kytch. f. 11.*

The Lord of a Mannor himself in person may make any grant of copyhold Land, or take a surrender, or make any admittance hereof, or a surrender, or descent in any place, as well without as within the Mannor, and as well without as within the Court. But the Steward must doe it within the Mannor, and in court, or it is not good. And yet by a speciall custome of the place a surrender may be made to the Steward, or to some of the Tenants out of court, and this is good.

The thing granted or surrendred must be at the time of the thing done parcell of the Mannor : For the opening of
which

which point, these things are to be known.

1. A customarie Mannor which hath copyholds within it, may be held of another Mannor, and be granted by copy as other Land may be be. *Co. 11. 18.* So may Houses, Lands, Meadows, or Pastures, and whatsoever doth concerne them which is of perpetuitie and parcell of the Mannor, as a common advowson, or faire appendant, the vesture or herbage of Land, Underwoods out of a great wood, and that without the soyle, if they have been usually demised by copy. And if the thing granted be incertain, it may be made certain by election as in other cases of grants at common Law. *Co. 1 part. Inst. f. 58. of Copyhold 117, 118. Co. 4. 31. Co. 4. 31. 37. Co. of Copyhold 120.* But such things as lie not in Tenure, as a rent Bayliwick, or Stewardship, commons or advowsons in grosse, which are incorporate Hereditaments, out of which no rent can issue, are not grantable by copy: So the Lords Demesnes which were never let by copy are not grantable by copy: And yet if in this case the Lord grant them by copy, he himself cannot avoid the grant, but

For the nature of it.

Incertaincie.

in bolimel
ed 1011111111
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Parcell of the
Mannor.

but it will be good against him for his life. *Quere* how he shall plead it: as grant by copy or by Lease paroll.

2. The thing granted must be at the time of the grant, made parcell of the Mannor, otherwise the grant will not be good. And therefore if the Lord make a Lease for yeares of the reversion of one of his copyhold Tenements: This Tenement (*Quere* 1. *Inst.* 325. a. *Plow. Com.* 103. 6.) during this Term is no part of the Mannor, and therefore cannot be granted by copy in the Lords court. But this happily may be in time reunited to the Mannor, and then grantable. But if a feoffment be made with, or without a Deed by the Lord of the Mannor, of one copyhold Tenement; by this the same is divided for ever from the Mannor, and cannot be granted by copy. And yet the grant made before the severance is good. So if one grant his Mannor (except one Acre) and after grant this Acre by copy; this is not good because at the time of the grant it was not parcell of the Mannor. *Co. super Litt.* 324, 325. of Copyhold. 82. *Dyer* 281.

Demised or
demisable by
Copy.

3. The thing granted must be demised, or demisable time out of mind by copy

copy; (that is) it is either let by copie at the present, or capable of being let by copie having been so let and not by Lease time out of mind. And if when it were last let, it was let by copie, and he now come into the Lords hands, and he never let it for many yeares together by Deed or otherwise; this hindereth not but that it may be let by copie. And in this case it matters not how it came into the Lords hands, whether by escheat, or forfeiture, or surrender: and yet if the Lord purchase the copihold of the Tenant, or it escheat, some have doubted if it be not extinct, and so not grantable again; but upon little reason as I conceive: *Calthrop. f. 16. 86. 91. 90. Co. upon Litt. f. 58. Calth. 55.* And if a copiholder forfeit his Land by waste, and a seisure is awarded; but the Lord suffereth the Tenant to occupie the Land twentie yeares together without receiving rent; he may after grant it by copie. But if after seisure awarded, a stranger enter disseise him, and make a feoffment in Fee, and then the Lord reenter and grant it by copie; this is not good by *Calthrop. f. 25. Quare* for a disseising and feoffment, cannot alter the nature of the

the land. If a man will overthrow a Copihold estate under pretence that it hath been let by Indenture, or otherwise then by Copie, he must shew it to be within the time of mans memory : for if it hath been let by Copie for fiftie or sixtie yeares, it will hardly be admitted to the contrary. *Calth.f. 19.85.*

The Heire of a Copyholder in Fee, hath before his admission such an estate in the Land that he may surrender it, or bring trespasse ; and if he die, his Heire shall have it by descent. *Dyer. 291. 302. Co. of Copyhold, 4. 21.*

If a Copyholder surrender his Land, to the intent that a stranger may have a rent out of it ; this is not a good Copyhold rent, by *Calthrop.f.92.*

3 In respect of
the Mannor
and Order of
the grant.
And of Grants,
Surrenders, Pre
sentments and
Admittances.

No Copihold land can passe from the Lord to his Tenant, nor from one Tenant to another, but by way of grant, or surrender in the Court of the Mannor, according to the custome of the place. And as touching this point these things are to be known.

1. In some grants a surrender is sufficient without Presentment or Admittance : In some an Admittance without a Surrender or Presentment : In some a

Sur-

Surrender and Admittance are both necessarie, and in some a Surrender, Presentment and Admittance are all necessarie. As if the Copyholder surrender to the Lords use, there needs no admittance. And if the Lord make a voluntary grant of a Copyhold in his hands, no Surrender is needful but Admittance onely. If the Copyholder surrender in Court to the use of a stranger, besides the Surrender Admittance is requisite. And if the Surrender be made out of Court to the Lord himself, which the generall custome will warrant, or into the hands of the Bayliffe, or of two of the Tenants, (which by speciall custome onely is warrantable) in this case there must be besides the Surrender, a true Presentment of the Surrender in Court by the same persons, into whose hands the Surrender was made, and an Admittance of the Lord according to the effect of the Surrender and Presentment. *Co. of Copyhold Sect. 38.*

2. A grant may be of Copyhold land in Fee-simple, Fee-taile, for life, or years, in possession or reversion, as the custome expressly or interpretatively will warrant it. *Co. of Copyhold, Sect. 47.* But the

Fee-simple,
Taile, Life,
yeares.

the Lord without a custome cannot grant a Copyhold in reversion. 13. Car. B. R.

3. If the Lord having Copyhold land in his hand, grant it by Deed or Fine, to hold at will, according to the custome of the Mannor; this is not good to make a Copyhold estate. *Calthrop. f. 47.*

Ancient Rent.

4. In all good grants of Copyhold estates, it seemes the ancient rent must be reserved, not onely in quantity, but in all beneficiall qualities. And therefore it is held, that if the ancient rent were in gold, and the new be in silver; or the old were payable at foure dayes, and the new be payable at two dayes; these are not good Copyhold grants. But this (it seems) is to be understood of Copyholds of Inheritances, and Admittances into them. *Co. of Copyholds f. 109. 110. Calthrop. f. 88, 89. 81.*

Surrender.

A Surrender is the giving up of the land by the Tenant to the Lord, according to the custome: And this is entred in this manner: *Ad hanc curiam venit A. de B. & finem reddidit in eadem curia unum mesuagium & in manus Domini ad usum C. de D. & hered. suorum [vel heredum de corpore suo extuntium, vel pro termino*

*termino vite sua, &c.] Et super hoc venit predictus C. de D. & cepit de Domino in eadem curia mesuagium predictum, &c. Habend' & tenend' sibi et heredibus suis [vel sibi & heredibus de corpore suo ex-
 untibus, vel sibi ad terminum vite, &c.] ad voluntatem Domini secundum consuetud' manerii, faciendo & reddendo inde redditus, servitia & consuetudines inde prius debita & consueta, & dat Domino pro fine, &c. Et fecit Domino fidelitatem, &c. Herein are many things to be known.*

1. This may be absolute, or upon condition; and it may be rendering rent on condition of reentry for not payment. *Co. 4. 21. 30.* And if he enter for the condition broken, it is in him as at the first without admission.

2. It may be to the Lord himself, or his Steward, or his Tenants, or his Reeve, or his Bayliffe, as the custome is. And it may be to the Lord out of Court, but it cannot be to the Steward out of Court without a speciall custome to enable it. *Mich. 37. & 38. Eliz. Brights Case.*

Custome:

3. It is in some cases necessary, and in some cases not: See for this.

4. When

Words of Surrender.

4. When it is necessarie it must be made : First, by a Copiholder, and Admission, otherwise it will not help. Secondly, it must be made to the Lord, that can make Copihold estates, or some other to his use as the custome is. Thirdly, if it be out of Court, it must be presented at the next Court, according to custome. Fourthly, the Lord must admit accordingly, or else (as some say) the Surrender is void. *Kitch.* 82. 60. *Co.* 4. 27. *Co.* 1. part. 61, 62. *Calthrop.* f. 97. Fifthly, this cannot well be made by any other word, but by the word *Surrender*. And therefore if it passe in the Court by the word *give, grant, bargain or sell*, this will not passe it, but the Heire of the Copiholder may avoid it. *Co. of Copyhold* 103. And yet if a Copyholder come into the Court, and desire the Lord to admit his sonne into his Copyhold, some think this is a good Surrender to the use of his sonne. *Calthrop.* f. 57. But if the Tenant come to the Lord and tell him that he is willing for his sonnes preferment, that he shall have his land presently, and desire the Lords agreement : who doth so, it is said this is no good Surrender. And yet if the Homage doe
after

after Present it for a Surrender, it is more questionable. *Calkh. f. 59.* If a Copyholder in the presence of other Copyholders of the Mannor say he is content to surrender his Copyhold to the use of 7. s. this is not a good surrender. But if he say he doth surrender into the hands of the Lord to the use of 7. s. if the Lord will thereunto agree; this is a good surrender whether the Lord will or not. So if the Tenant reigne his interest in the Court into the Lords hands, therewithall for him to do what he will, it seems this is a good surrender. If the Copyholder say in Court, he will be no longer Tenant to the Lord, and this be Recorded, this is no surrender. If a Copyholder for life, take a new estate for life; this is a surrender of his first estate for life; but if the second be by Deed,

Quare Calthrop. 59.

5. A surrender may be made of a Copyhold by Attorney, if there be no custome in the place against it, it is not of necessitie that the Copyholder be present in Court. But if this power be by speciall custome, it cannot be done by Attorney: As if a Copyholder have a power to make a Lease for twentie years

Attorney

Custome

K

after

Infant.

after his death; Or an Infant have power to make a Lease at yeares of discretion, or a man may surrender out of Court to the Tenants, these things cannot be done by Attorney. *Co. of Copyhold, 93. Co. 9. 76.*

6. If a Copyholder in Fee surrender to the use of himself for life, and after to the use of *R.* his son for life, and after to the use of his last will; this is a good surrender, and the estate may be made accordingly. *Co. 4. 23.* But a surrender after a mans death to the use of a mans last will is not good. If a Copyholder in Fee surrender to the intent that the Lord shall regrant to him for his life, the remainder to his wife till his sonne come to 21. yeares of age, and after to his son in taile; this is a good surrender, and is to be executed accordingly. *Dyer. 251.* And if two Jointenants be, and one surrender his part out of Court into the Lords hands to the use of his last will, and by his will deviseth his part to a stranger in Fee and die, and at the next Court this is Presented; this is a good surrender, and by this the Jointure is severed. *Co. 1 part. 59.*

Jointenants.

7. If a surrender be to the Lord generally,

Of Copyholds.

nerally, without saying to whose use; it is good enough. *Kitch. 8*

8. If the Copyholder surrender to the use of another, and the Lord grant it to the *cestuy que use* not naming the surrender; this is good enough by *Calthrop. f. 99.*

9. In a surrender it matters not whether the partie to whose it be, be precisely expressed, if, by any circumstance he may be known. And therefore a surrender to the Archbishop of *Canterburie*, Major of *London*, next of his Kin, or next of his blood, his brother, his sister, or his son, may be good, and it may be made certain by averment. So if it be to a mans wife without warning of her; or to the high Sheriffe of *Norfolke*. But a surrender to the use of ones couzin or friend is void for incertaintie. So if it be to the use of three or foure of *Dale*; or to the use of *A. B.* or *C. D.* *Co. 4. 29. of Copyhold 96.*

Incertainde

10. The surrender binds the Land immediately, so as the Lord cannot avoid or prevent the intention, nor prejudice him that is to have it by any Act that he can do. And yet it is rather a manifesting of the parties intention, then a passing

The operation
of a Surrender;

32
 ling of an interest. For till admittance the Surrenderer is Tenant to the Land; and shall receive the profits to his own use; and he must perform the Services. And yet he cannot passe the Land to any other, or make it subject to any incumbrance of his: nor hath the Grantee any interest to punish trespasses, surrender, &c. And yet he cannot be defeated of it. And he may compell the Lord to admit him. Co. 4. 26, 29. of Copyhold fol. 106. If I make a surrender to the Lord, *ex intentione*, that he shall grant the Land to *J. S.* and the Lord refuse to grant the Land to *J. S.* accordingly: in this case I may reenter upon the Lord: But *J. S.* hath no remedy, as in case where the surrender is made to the use of *J. S.* by *Calthrop. f. 61.*

Counter-
maund.

11. A surrender is not countermandable by the Surrenderer. And yet if a Copyholder languishing in extremities, surrendreth his Land out of Court to the use of his cousin in consideration of blood, or to the use of his son in consideration of naturall love, and after recover before Presentment, happily this may be revoked. But if it be upon good consideration, as for payment of debts, and for any

any summe of money paid, though it be made out of Court, yet it is as binding, as if it were made in the Court. *Co. of Copyhold* 106.

The Presentment made out of Court must be afterwards duely Presented at the Court according to the custome of the Mannor. In which these things are to be known.

Presentment.

1. This Presentment is the Information of men, sworn to the Lord or Steward touching some things done out of court.

2. This is either generall, (i.) of all things, and by the whole Homage; or it is speciall (that is) by some Tenants, or of one, or some things onely.

3. This by the generall custome is to be made the next Court after the surrender, but by the custome of some Mannors may be the second or third Court after the surrender; and if it be not then Presented according to the custome, it is void. *Co. II. part. 61, 62.*

Custome.

4. This also must be made in all things according to the surrender, otherwise it is not good. And therefore, if the Surrender be conditionall, and the Presentment absolute; all is naught: and yet if the Surrender be rightly

Presented, and the entry of the condition be omitted by the Steward ; this upon proof may be holpen. *Co. 1 part. 61, 62. of Copyhold 107.*

5. No death will hurt the Presentment, and therefore if the Surrenderer die, yet the Presentment may be made after his death. And if he to whose use the surrender is made die before Presentment, the Presentment may be made thereof after his death, and thereupon his heire shall be admitted. So if *J. S.* surrender to the use of *A.* for life, the remainder to *B.* and *J. S.* die, and *A.* die before the Presentment made, and after the Presentment is made ; in this case he in remainder shall be admitted. So if two surrender to the use of two joyntly, and one of them die before Presentment ; in this case the other shall be admitted to the whole. So likewise if the Tenants that take the surrender die, the Lord may notwithstanding upon proof of it take in the Tenant by admittance. *Co. 4. 39. of Copyhold Sect. 40. fol. 107. Co. 4. 28, 29.* And yet if a surrender be made to the Lord in the presence of Tenants out of Court, and there the Lord doth grant it, but he dieth before this

this is Presented, or the Tenant admitted; this it seemeth is not good. *Calthrop. 46.*

To the perfection of the Copyholders estate, Admission, as that without which no estate passeth by the Surrender, is necessary. As touching which, these things are to be known.

Admittance
upon Grant or
Surrender.

1. This is the receiving of the Tenant into the Copyhold by the Lord or his Steward, according to the custome of the place. And it is thus entered: *Ad hanc curiam 7. S. petit admitti, &c. Quem Dominus per Seneschallum admisit, & unde admissus est tenens. Co. of Copyhold 125. Calthrop. f. 62.*

2. Some make it expresse, and implied(i.) by acceptance of rent, &c. *Calth. f. 62.* It is also either upon a voluntary Grant, or Surrender, or upon a Descent *Co. 1. 140.*

3. It is a judicall Act of the Lords, and in case of a voluntary admittance, he is but an Instrument, and may be compelled according to the custome to doe it; for he is not esteemed as owner to any purpose, and therefore he cannot prejudice the surrender in any case. And therefore as to this Act the Lords Title

to the Mannor, whether he have it by right or wrong is not much considerable. *Co. of Copyhold*, 110.

4. This is necessary, for upon voluntary grants and surrenders, the Tenant hath nothing in the Land till admittance, and upon descents he is not perfect Tenant till his admittance. *Co. of Copyhold*. 112, 113. Yet in case of a surrender to the Lords use no admittance is needfull, and where there is an implete admittance there needs no expresse admittance: and where Tenant in possession is admitted, he in the remainder on the same Copy need not to be admitted: also the surviving Jointenant when they were both admitted at first, need not to be admitted; and yet the heires of a Copartner must be admitted into a moiety. *Calth. f.* 63, 64. And he that enters for a condition broken needs no admittance. *Calth. f.* 61. If a Copyholder for yeares die, the Executor needs not be admitted. So neither the husband of the wife Copyholder for yeares after her death. *Calth. f.* 95.

5. The Steward it is said may doe it out of Court any where within the Mannor, except there be any custome against it

it. *Kitch. 82. Co. of Copyhold, 1123.*

6. The Admission must pursue the Surrender, yet in some cases albeit it do differ from it, it is good enough. And therefore if the Surrender be to the use of *7. S.* for life, or to the use of *7. S.* generally; and the Lord doth admit him in Fee; this is a good admittance for his life onely. And yet if the surrender be on Condition, and the Lord omit the Condition, it is all voyd. *Co. of Copyhold 112.* So if the surrender be to the use of *7. D.* alone, and the new grant and admittance are to *7. D.* and *7. B.* this is good for *7. D.* and void for *7. B.* *Co. of Copyhold 111, 112.* So if the surrender be reserving *10s.* & the admittance be reserving *20s.* it is good for the *10s.* But if the surrender be reserving *20s.* and the admittance is reserving *10s.* it is all naught; the contrary seems to be deduced from the case of *Westwick 4. rep. 28. a. & b.* So if the surrender be to the use of *7. S.* and the Lord admit *7. G.* and after admit *7. S.* it is said in this case *7. S.* and *7. G.* shall have the land together. But if the surrender be to the use of *7. S.* alone, and the Lord admit *7. G.* alone; this is all void. *Co. 4. 28. of Copyhold 111.*

If

If the surrender be to the use of *A.* for life, the remainder to *B.* and *A.* is admitted; this is good for him in remainder. *Co. 4. 23, 24.*

7. The admission must be according to the custome, yet if the custome will warrant the womans estate *durante viduitate* onely, and the Lord admit for life, or the Lord admit not reserving the antient Rent in quantity or quality, this will not prejudice the heire, but that he may avoid it. *Co. of Copyhold. 109.*

8. Admittance cannot make a bad estate good, nor change the custome. *Kyrch. 82. 86.* See more of this after at *Fine. Numb. 9. 10.*

The heire of a Copiholder in Fee hath such a Possession, and is such a Tenant before admittance, that he may (paying the Lord his Fine which may be afterwards) enter, take the profits, surrender or bring an action of Trespasse, and if he die, the heire shall have the Land, and there shall be a *possessio fratris* upon his entrie. And yet it hath been doubted if a Copyhold descend to a feme Covert, and the Husband take the profits, but suffer a Court day to passe without admittance, whether he shall be Tenant by

Rent.

Upon a Descend.

by the Courtesie or not. *Dyer* 291, 292. *Calth.* 60. But in admittances upon a grant or surrender; as if one surrender to the Lord to the use of *J. S.* and the Lord grant it accordingly, it is otherwise; for there the Tenant hath nothing till admittance. But the heire of a Copyholder shall not be sworn of the Homage, nor bring a Plaint in the nature of an Assise till admittance. So that an admittance in this case is rather for the benefit of the Lord to help him to his Fine, then to strengthen the Title of the heire. But the heire is in most places bound under pain of forfeiture of his estate, or some other great penalty to be admitted, and therefore he must be admitted.

Co. 4. 23. *Dyer* 291. *Co. of Copyhold* 113, 114. 117. *Calthrop.* fol. 62.

9. Upon every admittance there is Fealty due to the party admitting, by the party admitted; a thing inseparable to the person which cannot be done by Deputy, and yet if the Lord will accept it, or dispense with it altogether, it is well enough. *Co. of Copyhold* fol. 95. 10. There is also a Fine due upon every admittance: See after.

There is in most places a Ceremony used

admittance
admittance
admittance

Fealty. 73

Fine

hereditabili or to a Major or Comminalty, or other Corporation, where no estate is named. So if I surrender to one and his heires, and he reciting this doth surrender it to my use in the same manner as I surrendred to him: So if I surrender to *J. S.* as large an estate as he hath in the Mannor of Dale, and he hath a Fee-simple in that Mannor, in all these cases the Law will construe it to be a Fee-simple.

Co. 4. 29. of Copyhold 139. If a Copyhold be surrendred to a man & *seminis* no *hereditabili de corpore*; or to a man & *heredibus ex ipso procreatis*, or to a man in Franck-mariage with his wife: In the first of these cases an estate taile passeth without the word *heires*, in the second without the word *body*, and in the third without either. Co. as before.

Fee-taile;

If a Copyhold be granted to a man in Fee-simple, or to a man & *sanguini suo imperpetuum*, or *sibi & assignatis suis imperpetuum*, without the word *heires*, that is onely an estate for life. So if such a grant had beene to an Abbot and his heires: So to *J. S.* and his heires so long as *J. D.* shall live. And yet if the grant be to *J. S.* and his heires so long as such a tree shall grow in such a ground; this shall

For life;

Jointenants.

shall be a Fee-simple. Co. as before. If this Land be granted to two men *& heredibus*, without *suis*: by this no Inheritance is made, and they are Jointenants for life onely. Yet if it be granted to *J. S. & heredibus* without *suis*; hereby *J. S.* hath a Fee-simple, and not an estate taile. And if it be granted to a man *& liberis, aut pueris suis de corpore*; this is no estate taile for lacke of the word [heires] Co. as before.

If the grant be to a man and the issues males of his body, by this is made an estate for life.

If this Land be granted to three, *Habendum successive*; by this they are Jointenants, and shall take together unlesse the custome (as in most places it doth) doe otherwise construe it. Co. as before.

If there be Copyholder for life, the remainder to another in Fee, and the Copyholder for life, doth surrender to the use of another in Fee, and the Lord admitt accordingly; by this there passeth an estate for life onely. Co. of Copyhold f. 91. So if the surrender be to the use of a stranger for life, and the Lord grant in Fee; this is good for life onely. Calth. f. 61. So if the Lord grant a Copyhold

pyhold for life, where an estate in Fee is warrantable; and this Grantee doth surrender in Fee to the use of a stranger, and the Lord admit him accordingly; by this it is said the Fee doth not passe. *Co. of Copyhold* f. 91. If the surrender be to the use of a last will, and the surrender deviseth it to two, and one of them only is admitted according to the will; by this both of them shall have it. *Co. of Copyhold* 98.

If one Copyhold be betweene two Jointenants in Fee, and one of them surrender his part out of Court to the Lord according to the custome to the use of his last will, by which he doth devise it to the use of a stranger in Fee, and dieth; and this is Presented at the next Court: hereby the Jointure is severed, and the Devisee must be admitted to a Moyety of the Lands. *Co. super Litt.* 59. If a Copiholder surrender to the use of his wife for life, the remainder to the right heirs of the husband and wife; the wife dies, and the husband doth survive: In this case if he have no issue by his wife, his heire shall have it, by the opinion of *Calthrop*. f. 82. And yet if the wife have issue by another husband, it is doubted.

And

Descent

And it is said that the husband and his heires shall have the Land; yet if the husband had first two sons, the heires of the husband, and the heires of the wife shall have the Land in common, after the decease of the wife; *Calth. f. 83.* If Land be given for life, the remainder to two men and their heires; in this case they cannot have one heire, and therefore if the Tenant for life die before them in remainder they shall be Jointenants. But if neither of them be alive when the Tenant for life dies, then the heires of them in remainder shall hold in common. *Calth. f. 84.*

If a Copyhold be surrendered to the use of *J. S.* and his heires, till he marry *A. G.* and then to the use of them two in speciall taile; this is good, and shall enure accordingly. *Calth. f. 22.*

If a Copyholder surrender to the use of a stranger, in consideration that the stranger shall marry his daughter before such a day; in this case if the marriage succeed not, the stranger shall take nothing by the surrender. But if the consideration be that the stranger shall pay such a summe of money at such a day; albeit the money be not paid, yet the

the surrender is good. *Calthrop. fol. 37.*

If the Copiholder in consideration of 20^l. to be paid by *I. S.* doth make a surrender of his Land to *N. R.* this surrender shall be to the use of *I. S.* and not to the use of *N. R.* But if in the Copy the use be expressed to *N. R.* and no consideration mentioned, the use expressed shall stand against any consideration to be averred. *Calth. f. 37.*

If a Copyholder surrender his Land to the use of *I. S.* so that *I. S.* pay 20^l. such a day if he please; this is an absolute, not a conditionall surrender. *Calthrop. fol. 39.*

The payment of the Fine by the Tenant is necessary to the continuance, but not to the creation of the estate, for the estate is made perfect without the Fine-payment: but for the more full understanding hereof, these things are to be known.

9: In respect
of the payment
of the Fine:
And of a Fine.

1. A Fine is a summe of money to be paid to the Lord for an income into the Lands.

2. This in some places is certain, and in other places is uncertain, and where it is certain, the Lord cannot increase it.

3. By generall custome this is to be paid

Custome;

L

Admittances.

paid onely upon admittances, but it may be also by speciall custome upon licenses granted to demise by Indenture.

4. The Fine is to be paid upon admittances in these Cases following : *(viz.)* Where the Lord after a Copyhold come into his hands, and he make a voluntary admittance, and where a Copyholder doth surrender to the use of a stranger, and the Lord doth admit him to whose use the surrender is made, and where a Copyhold of Inheritance descendeth, and the heire is to be admitted : So where the wife is to come in as Tenant in Dower, or the husband as Tenant by the courtesie : and so also where one doth enter as a generall or speciall occupant. And so also where the Copyhold Lands of a Bankrupt are to be sold upon the *Stat. of 13 Eliz. 1.* in all these cases the Tenant is to be admitted, and to pay a Fine. So also if a Copyhold be surrendred to the use of one for life, the remainder to the use of another, and the Tenant for life die ; he in remainder must pay Fine upon his admittance. So where the Habend of the grant is successive, and one of them die, the next must be admitted and pay Fine. So if

two

two Copartners or Tenants in Common be, and one die, and the whole descend to the other, there must be Fine upon the admittance. But if there be two Jointenants, and one of them die, and the other come to the whole by survivourship; or one take a wife, a Copyholder in Fee; or marry with the termor of a Copyholder; or a Copyholder be disseised, and then enter upon the disseiser or recover by plaint in the nature of an Assise; or a Copyholder in Fee surrender for life, reserving the reversion, and the Lessee for life dieth; or a Copyhold be granted on condition, and the condition is broken, and the granter reentereth; or the Lord enter upon a villein, that hath purchased a Copyhold; or the Bayliffe is by custome to have the Wardship of an Infant: in all these cases there needs no admittance, and therefore no Fine is to be paid. And yet if a Copyholder die seised and a stranger abateth, and the heire recovereth by plaint in the nature of an Assise of Mortdancester: upon this recovery an admittance is to be made; and therefore a Fine is to be made. *Co. of Copyhold Sect.*

56, in 1010.

5. If the Lord use to take for his Fine sometimes 2^d. sometimes 4^d. sometimes 6^d. an Acre ; this is so incertain, that it shall be said to be arbitrary. *Calth.f. 25.*

10. In respect
of entrie in the
Rolls of the
Court.

The Steward of the Court must take care to record and inroll all the conveyance of estates. For some have held, That if the Lord in open Court grant a Copyhold estate, and no entry is made hereof in the Court Rolls, that the grant is not good, and that no collaterall proof will make it good. *Calthrop. f. 47.* But if the Tenant have no Copy, or lose his Copy, the Roll of the Court is a good evidence. And if these Rolls be lost, it is thought clearly it may be supplied by proof. *Calthrop. f. 47.* And yet if Bylawes be made and entered upon the Rolls, and the Rolls be lost, the Bylawes are gone, otherwise it is of Customes and Priviledges inrolled and lost. *Idem.*

Bylawes.

Customes.

11. In respect
of Custome :
And of Cu-
stomes.

That the grant made by Copy of Court Roll may be good, it must be made according to the custome of the Mannor, and that custome must be according to Law : but as touching customes these things are to be known.

Custome what?

1. A Custome is a Law or right not written, which being established by long use,

use, and the consent of our Ancestours hath been and is dayly practised.

2. Though Custome, Prescription, Usage and Limitation be much of affinity, and one of them be taken for another, yet they differ much; For,

1. Custome can have no beginning since mans memory, but Prescription Prescription. may.

2. Custome toucheth many men in common, that they by continuance of time have gotten a right, and this is alledged thus, That in such a place is such a Custome; but Prescription toucheth this or that man, when he by continuance of time hath obtained a right against another man, and this is personall, and alledged in the name of some person in certain thus. That he and his Ancestors, and those whose estates he hath time out of mind, &c.

3. Usage is the efficient cause or life of both, for both lose their being if usage faile. *Calthrop. f. 17. Co. of Copyhold Sect. 33.*

Usage.

4. Limitation, is where a right may be obtained by reason of a non-claim by the space of a certain number of yeares, differing in account of time

Limitation.

from Custome and Prescription.

1. The measure whereof is so long as mans memory cannot remember the contrary, (that is) that no man alive hath heard or knoweth any thing to the contrary. But limitation hath a certain time of beginning and end.

2. Customes are either generall, as which is part of the Common Law used in all places alike: Or particular, which are used onely in some places; as in *Kent*, *North-Wales*, *Gaselaine*, *Burrough English*. And these again are either disallowing what generall customes doe allow: As that the Copyholder shall not sell his land to a stranger, and compell the Lord to admit him till he hath first offered it to the next of blood, or next of kin, or next neighbour *ab omnibus solis*; who giving as much as the party to whom the surrender is made shall have it. Or else they be such as doe allow what generall customes doe disallow; as for a Copiholder to let his land by Deed for longer time then a yeare without license, which by the custome of some Mannors he may do: *Consuetudo ex certa causa rationabili usitata priuat communem legem*. Co. of Copyhold Sect. 33.

4. To

4. To know what customes are good and what not, these rules must first be taken. First, Customes and Prescriptions must be reasonable. 2 *Ed. 4. 24.* Secondly, they must be according to common right. 42 *Ed. 3. 4.* Thirdly, they must be upon good consideration. 5 *Hen. 7. 9.* Fourthly, they must be compulsory, not voluntary, 42 *Ed. 3. 4.* *Ausm. 66.* Fifthly, they must be certain. 13 *Ed. 3. 4.* Sixthly, they must be beneficiall to them that claim them. 31 *Ed. 3. 4.* Prescription. 40. 28. Seventhly, it cannot help a man to that which is gained onely by matter of Record. Eighthly, it cannot extend to a thing newly created. Ninthly, they need not be used dayly and hourly, but according to time and occasion. *Calthrop. 22. 21.* Tenthly, Non-user, as if the Lord hath been used to have workdayes, and have not had them for twentie yeares together; this will not hurt the custome. *Calthrop. f. 25.* Eleventhly, custome may oppose the Common Law, but not a Statute Law. *Calth. 87.*

Hence it is that these following customes are not allowed to be good. (viz.) That no Tenant shall use his Common by putting in of his cattle in cam-

For Common,

To have a Fine
for a trespasse
or other cause.

pis seminatis after severance of the corn till the Lord put in his cattle, for he may choose if he will to put in at all.

That if any mans beasts be taken damage feasant upon the Lords Demesnes, he may keep them till the owner give him such as he shall please, for this is to make him judge in his own case. And yet if the custome be that if the Copyholder trespasse him, and it be presented at Court, that this shall be a forfeiture is good. *Calthrop. f. 29.*

That every Copiholder shall pay the Lord a certain sum of money for every Court he keeps. Or that he shall never keep a Court till when it please him, for this Court being to doe Justice must be gratis. And yet such a custome alledged to be for the keeping of an extraordinary Court is good.

That every stranger that shall make a Pound-breach, shall pay 1^l. and yet it is held that a custome laid, that every Tenants which shall make a Pound-breach shall forfeit 5^l. *Calthrop. f. 31.*

That every one that ride through the Kings high way within the Mannor, must pay the Lord such a summe of money. And yet if it be that every one that

that passeth over such a bridge within the Mannor which the Lord doth maintain; it is good enough.

That every Copyholder that doth marry, or shall marry his daughter, shall pay so much to the Lord for a Fine. And yet where the custome doth admit the husband Tenant by the courtesie, and wife to be Tenant in Dower, or to have widowes estate of the Copihold, that in these cases they shall pay a Fine, is a good custome.

That every Copyholder shall hold his land without paying any rent or service to the Lord. And yet it is held a good custome to prescribe by fealty for all manner of services, is held good. *Calthrop. 29.* So a custome may be good to exempt one Tenant from that which all the rest of the Tenants doe bear and good. *Calthrop. f. 77.*

That every Copyholder shall give to the Lord so much in the time of warre every moneth to bear his charges. And yet if it be that he shall pay so much to the Lord for this purpose it is good; the reason of the difference is, because a payment is compulsory, a gift voluntarie.

Incertainty.

That

That when one Copyholder dieth, another of the Copyholders (and say not which) shall hold the land for the yeare following. And yet if it be, that if a Copyholder die without heire, the eldest Tenant of that name within the Mannor shall have the Land; this is good, *Caltrif 311* and *manor 1* *hand*

For Fine.

That the Lord shall have for his Fine 2s rent an Acre, and when he please 4^d an Acre. And yet happily if the Lord prescribe to have 2^d an Acre rent in time of peace, and 4^d in time of warre; this may be certain enough and good, *manor 1* *hand*

To do waste.

That a Copyholder shall cut down what timber he pleaseth, fire, pull down or destroy the houses, or let them fall. And yet happily a custome that the Tenant shall cut down more then ordinarily, or that the Tenant shall have necessary fireboot, &c. that he may sell underwoods and shroubs, may be good, *manor 1* *hand*

To pay a Fine.

That every Tenant shall pay a Fine at every alienation of the Lord. And yet if it be that every Tenant shall pay a reasonable Fine at the Lords death: or that a Fine shall be paid at every death or alienation of the Tenant: or that the Lord shall admit without Fine, if the usage

usage have been for Cathrop fol. 40.
These and the like customs are allowed
to be good : but these following cus-
toms are disallowed, (viz.)

That the wife of a Copyholder shall
during her life or widowes estate hold
all the Land.

That the Tenant shall have Common
in the Lords wafts.

To have Com-
mon.

That if he that hath right, claim not
the Land within a yeare and a day af-
ter the Antecessors death, he shall lose
it and yet this will not bind an Infant.

That the Lord may grant for one two
or three lives in reversion.

That a surrender may be made to the
Bayliffe or Reeve, or two or more Te-
nants out of Court.

That the surrender made by the Te-
nant in taile, shall bar the issue in taile.

To make a
Surrender.

That the Lord may keep his Court at
another of his Mannors.

That the Lords Steward or Bayliffe may
grant Copyhold estates to the Tenants.

That a feme Covert may grant her
Copyhold estate to her husband by sur-
render.

That an Infant of yeares of discretion
may surrender.

That

That the new Tenant shall pay a Fine to the Lord, as he can agree upon his admittance.

That Proclamations be made three Courts one after another, and if the heire come not and pay his Fine for admittance he shall lose the Land. *M. 7.*

Fac. B. R. Lyfords case.

That the Copyholder may let for longer time then one yeare without License.

To Surrender
out of Court,

That an Inheritance shall passe by Surrender in the Lords Court without his leave, and be delivered over by the Bayliffe to the Feoffee according to the Deed to be inrolled in Court.

If the Lord prescribe, that whosoever take a distresse within his Mannor, he must put him in his Pound for a time; this is not good, for it is no benefit to him. But if he adde further, that the Lord is to have so much for the impounding, it is good.

Prescription.

The Lord may not prescribe to have Felons goods, Fugitives goods, Deodands, because they cannot be forfeit till they appear of Record: but Waifs, Estrayes, Wreck, and such like things, may be gained to the Lord by prescription, for

for they may be gained by usage without matter of Record.

That the wife of the Copyholder shall be Tenant in Dower, husband Tenant by the courtesie, (a *Quare* may as well be made of this, as of entayling Copyholds; since this Tenant by *Elegit, &c.* commenced by Statute which is within the memory of man) or a stranger tenant by Statute Merchant, (and so no custom can be of it. *Co. of Copyhold, Sect. 47.*) or staple of the Land in the hand of the Copyholder, are good customes. *Co. of Copyhold 136.*

That the Tenant may make a Lease for twenty yeares after his death, is a good custome. *Co. of Copyhold f. 93.* To make Leases.

That the Tenants shall pay the Lord every fourth yeare the double rent, and every sixth yeare a halfe years rent, is a good custome: so that when they sow their Land, they shall pay their rent in corn, and when they feed it, in money, is a good custome. *Calthrop. f. 25.* To pay Rent.

All customes, especially such as are in derogation of the Common Law are taken strictly, but not literally. And therefore where a custome is that a man may grant in Fee; by this he may grant in How they shall be taken. To make estates.

in taile or for life. So where the custome is, that the Lord may grant for life; by this he may grant *durante viduid*. *Cui licet quod majus, non debet quod minus est non licere; sed non e converso*. But where the custome is, that the wife of the first taker shall have her widowes estate, by this the wife of the second shall not have it. *Coke 4.30. of Copyhold. 70. 77.*

If the custome be that the Copyhold Land may be Leased by the Lord *vel supervisor vel deputat supervisor*: the Lord cannot by his Testament appoint authorize one to keep Courts and make estates. *Co. 4. 30. of Copyhold 35.*

To pay money.

Common.

If there be a custome that for every house in the Mannor two shillings Fine shall be paid: if the Tenant maketh one house into two houses, or maketh a new house, no Fine shall be paid for these new houses. So if I have estovers appendant to my house, and I build a new house, I shall not have estovers to this new house. But if I onely change the rooms, my estovers do continue. So it is of a water course to a Fulling-mill, converted to a Corn-mill, or of a light in a Hall, converted to a Parler. *Co. 4. 32. of Litt. Sect. 74.*

The

The prooffe of these customes, and due President, as to prove Leases, may be made for longer time then a yeare: to shew one Lease, is no prooffe of a custome.

Prooffe of it.

In custome there is *User*. First, when according to time and occasion it is used. Secondly, *Non-user*, i. when for want of time and occasion through negligence or forgetfulnesse it is not used: this will not hurt the custome. And therefore if there be a custome that the Tenants shall doe work for the Lord yearly, and it hath not been done for divers yeares, yet the custome remaineth, if any man living can remember it hath been done. And so it is if one have a market one day a weeke, and do not keep it. Thirdly, if the Tenant use to pay the Lord when they sow their Land rent corn, and when they feed it, money, or to pay the Lord every fourth yeare a double rent, and every sixth yeare a half rent: this is a good *Inter-user*. Fourthly, *Abuser* is where the Tenant doth put in other cattle or more cattle in the Lords soyle then he ought; this doth not destroy the custome, but this is Fineable at the Lords Court. And

Loft.

For payment
of rent.

so

so it is if the Lord have a Faire or Market one day of the week, and he keep it another day; this is not a forfeiture of the custome. And yet if he have it two dayes, and keep it three dayes, this is held to be a forfeiture. *Calth. f. 43, 44, 45.* See more to this in the next question.

CHAP. 20.

When and how a Copyhold shall be said to be destroyed or suspended.

FOR the clearing of this point, these things are to be known. 1. The Copyhold is destroyed and gone in all these following cases. 1. When the Copyhold is either by Act of Law, or Act of the Lord or the Copyholder, or Tenant become not demisable by Copy. As for example, if the Lord by Fine or Feoffment, or otherwise by Deed grant the reversion of one or some of the Copyhold Tenements, of the Mannor in Fee, or for Lease to me, by this it is gone. And in this case also it is so gone, that no acceptance of Rent, or admittance of the Tenant after will revive it. But if the Lord grant the reversion of all his Copyhold

hold Tenements; by this the Mannor is not destroyed. *Co. 4. 27. of Copyhold 176.* Or if when the Copyhold is come into the Lords hand, he do by Fine, Feoffment or Recovery passe away the Fee, or make a Lease for life or yeares of the Land, or suffer it to be extended on a Statute or Elegit of his own acknowledgement, or if after it come into the Lords hands he die, and it be after assigned to his wife in Dower; by this in these cases the custome is destroyed for this Land. *Co. 2. 17. Calth. 91.*

Or if the Lord or his Lessee of the Mannor doth make a Lease of the Copyhold to the Copyholder, or make a Feoffment absolute or conditionall to the Copyholder of the Copyhold, the which he doth accept. Or the Lord make a Lease of the Mannor to the Tenant for life, the Remainder to a stranger; by either of these also, it is gone. *Dyer. 114. Kyth. 82.* Or (as some say) if the Copyhold come into the Lords hand by escheat, or the Lord purchase the Copyhold; but this opinion is disallowed. *Calthrop. 90. 88. 91.* But if the Lord grant part of the Copyholds onely, by this it is clear the Mannor is gone, and

custome destroyed. Adjudge 29. *Eliz. Calth.* 99. And where the Copyhold is extinguished, the Land can never be afterward granted by Copy.

If there be a Lease for yeares of the Mannor, and one of the Copyholders doth purchase the Reversion in Fee; by this the Copyhold is destroyed, and the Lessee of the Mannor shall out the Copyholder, and have the Land for the time. *Calth.* f. 97.

And yet if the Copyholder accept a Lease for yeares of the Mannor, or marry with the wife of the Lord, by this the Copyhold is not extinct, but it is suspended. And if a Copyhold be in hand, and the Lord alien by Fine or Feoffment, or make a Lease of the Mannor for yeares, by this it is extinct.

And if a Copyhold be granted to three for their lives, and the first of them take an estate by Deed, with livery of seisin from the Lord; by this the Copyhold for that life is at least suspended. *Dyer* 30. *Co.* 4. 31. But the Copyhold is neither extinct nor suspended in these following cases, (viz.) where the Copyhold is surrendred, forfeit, or doth escheat into the Lords hands, and the Lord

Lord doth keep it in his own hands, or let it at will onely; or the Tenant having License from the Lord, make a Lease to a stranger according to his License: or without License make a Lease to the Lord. Co. 4. 30. So where the impediment is tortious, as if the Lord be disseised, and the disseisor die seised; or the land be recovered by false verdict, or erroneous judgement, and afterwards is recontinued. *Quod contra legem fit pro infecto habetur. Non valet impedimentum quod de jure non sortitur effectum.* Co. 4. 31. of Copyhold 178.

But in all the cases before where the Copyhold is gone, by grant of the reversion it is not so gone, but that the Tenant shall hold his estate still; and subject to forfeiture as before, and he must still perform the same services (Suit of Court excepted) as before, and the customs incident to the Land, as if it be Burrow English or Gavelkind, continue still. But Fine upon Alienation, and Admittance is gone, and the Tenant cannot now surrender or passe his estate by any way but by a Decree in Chancery: And this will bind the person onely. Co. 4. 25. of Copyhold 176.

CHAP. 21.

What Acts amount to the forfeiture of a Copyhold estate, and him.

OF Acts which amount to a forfeiture, some are forfeitures *ipso facto*, and *eo instanti* that they are done, such are offences apparent and notorious, of which the Lord by common presumption cannot but have notice: Some are no forfeitures, till a Presentment be made thereof. Other Acts there are which are offences, but are not such as cause a forfeiture, yet are the Finable to the Lord.

Of the first sort are these following Acts.

1 By not coming in to take his Land,

Admission.

If by speciall custome upon the descent of any Copyhold of Inheritance the heire be bound upon three solemne Proclamations, at three severall Courts, to come in and be admitted into his Copyhold and he cometh not, this is a forfeiture if he do not come; this is *ipso facto*, a forfeiture. *Calthrap. f. 69. Co. of Copyhold 164.* And yet if a Copyholder enter before admittance, this is no forfeiture

feiture without a speciall custome for it.

So if a Copyholder being sufficiently warned to appear at the Court Baron of the Mannor, and he wilfully make default, having no excuse for his absence. And this offence is greater if he do wilfully refuse to come; or being come to be sworn of the Homage, or being sworn to Present; or if he depart without Presentment: as if thirteen be sworn, and twelve Present, and one refuse. But if a Copyholder be hindred by sicknesse, waters, debts or the like, his default is no forfeiture, but otherwise it is *ipso facto* a forfeiture. And yet some say this must first be Presented ere the Lord can take advantage of the forfeiture, *Dyer. 211. 31. Calth.f. 67. Dyer. 233. 9. H. 6. 44.* So if he swear in Court, he is none of the Lords Copyholders, or being required to be sworn of the Homage, refuse it for that cause; this it seems is a forfeiture, and that without Presentment.

So if the Steward shew a Roll whereby the Tenant is proved a Copyholder, and the Tenant say he is a Freeholder, and shew a Deed to that purpose, and tear in pieces the Court Roll; this is such a forfeiture. And yet if there be a

2 By denying
of Suit of
Court.

doubt in it, and the Copyholder doe his service with a Protestation, that it may be recorded as it shall fall out: this is no forfeiture, nor Finable. So if he speak unreverent words of the Lord in the Court, as if he say that he doth exact and extort unreasonable Fines, and undue services; this is onely Finable. So if he say that he will devise a means to be no longer his Tenant; this is neither a forfeiture, nor Finable.

3 By non-payment of the Fine.

Where the Fine upon Admittance is certain, if after admittance it be upon demand denied, or not payed. Or where the Fine is uncertain, and the Lord hath set it reasonable, and the Tenant doth not pay it in a reasonable time after demand; in these cases it seems there is a forfeiture. But it is no forfeiture in him to deny the payment if it be set unreasonable. And of this point the Judges and not the Jury shall be Judge. And yet of this also some hold there must be a Presentment before there can be a forfeiture. *Co. 4. 27, 28. Calth. f. 67. Trin. 4. Jac. B. R.*

4 By bringing a Replevin.

If the Copyholder sue a Replevin against the Lord distrayning for his Rent or Service; this is such a forfeiture. *Co.*

of

of Copyhold 167. So if the Lord bring Trespasse against the Tenant, and he plead it his Freehold. And yet if the Copyholder doubting of the truth of it, whether it be due or not, intreateth of the Lord that the Jewry may inquire thereof; this is no forfeiture.

5 By pleading.

If a Copyholder for life suffer a recovery by plaint in the Lords Court as Copyholder of Inheritance; this is said to be such a forfeiture. And yet if such a Copyholder surrender in Fee; this is no forfeiture. So if Copyholders in Fee make Partition; this is no forfeiture, *Calthrop.* 98.

6 By suffering a Recoverie.

If the Lord demand his Rent of the Copyholder, and he deny to pay it, or he delay to pay it without the Lords agreement: Or if the Lord come upon the Land, and there continue demanding of the Rent, and it is not paid; this is such a forfeiture: For the Copyholder knowing the time of payment, is to provide it against that time. And this also by speciall custome may be a forfeiture before the admittance of the Tenant. *Co. of Copyhold* 167. *M. 7 Jac. B. R.*

7 By not paying Rent.

Waste in a Copyholder is either voluntary, or permissive. If a Copyholder

8 By doing waste.

commit voluntary waste, as if he pluck down any antient built house, or build a new house, and then pull it down again: or plow up meadow ground, so that the ground is thereby made worse: or cut more timber then there is need of: or being cut doth misemploy it: or doth not employ it in due time: or lop the trees and sell the loppings: or cut down any fruit trees for fuell, having other wood sufficient: or behead trees, or break the boughs, so as the bodies doe thereby putrefie: all these things are forfeitures. And yet the cutting & carrying away of shrowdes or underwood is no forfeiture, without a speciall custome to make it so.

So if the Tenant have a grant of the trees, or a License to cut down trees; in this case it is no forfeiture: but otherwise in these and such like cases without a speciall custome (which ruleth much herein) to enable the Act, it is a forfeiture, 9 H. 4. 12. *Calth. f. 68.* 4. 36, 37. *Elix. Co. B. Co. 4. 27.* of Copyhold 168. *Calth. 98. Co. 1. 63.* And these things will be a forfeiture when they be done by the Lessee at will of a Copiholder, and the Copyholder shall have his remedy

medy over against the Tenant at will by Action of the case. So also it is for permissive waste : as if the Copyholder suffer his house to decay, or fall for want of repair, or suffer his Meadows or Lands by his ill husbandrie to be spoyled. And yet some are of another opinion in some of these cases, for they hold that many of these are no forfeitures till there be a Presentment of them. And herein they distinguish betweene voluntary and involuntary Acts, and Acts that lie in non-feasance, which they say must be Presented, and Acts that lie in misfeasance, which needs no Presentment. *Calth. f. 68.*

Of the next sort whereof the Lord must have a Presentment before he can take advantage of the forfeiture, are these things following (viz.) where the Copyholder doth commit Treason or Felony, and be thereof attaint. Or be convict for Recusancy, or be outlawed, or be excommunicate, or goeth about in any other Court to intitle the Lord to the Copyhold. Or if he Alien his Copyhold Land by Fine, Deed, or make a Lease of it without License of the Lord: And yet this Lease as to all others but the

9 By committing of Treason, Felony, &c.

10 By making a Lease, &c. License.

the Lord himselfe is good. But in case where the custome will warrant a Lease for a yeare; there it is no forfeiture, whether it be by word or writing; for without a custome of enablement, it is held that a Copyholder by the Common Law cannot make a Lease for a yeare. *35 Eliz. ch. 2. Trin. 3. Jac. Curia. Co. 4. 27. Litt. Sect. 74.* If the Copyholder having a License to let for ten yeares, and he let for twentie yeares; this is a forfeiture. Yet if the Copyholder for life surrender to the Lord to the use of another in Fee, or make a Feoffment in Fee or Lease for life, but doth not make Livery of Seisin upon it, or not make a good Livery upon it, or doth bargain and sell the Land without Inrollment of the Deed; neither of these is a forfeiture. *Trin. 36 Eliz. 2. Co. B. Co. 4. 23. 1. part. f. 59. of Copyhold 169.*

So if the Copyholder have Copyhold Lands and other Lands in Dale, and he bargain and sell all his Lands in Dale, and the Deed is inrolled; by this the Free land onely passeth, *ergo*, this is no forfeiture: But if he have no Free land there it is a forfeiture: And all these offences

offences are the greater when they are willingly done.

Of the third sort of offences are these following, (viz.) Where the Copyholder being of the Grand Jury, doth indict the Lord, or give evidence against him: or being a Bayliffe if he arrest him or sue him at Law (except it be in the case of a Replevin before); neither of these Acts is a forfeiture, nor is it Finable. So neither if the Copyholder disseise the Lord of any other Land. *Calthrop. f. 68. 91.*

So if the Copyholder abuse the Lord in words, or abuse the Lords Common with his Cattle, or raile upon another Copyholder in the Court, or use any such like words or deeds of contempt, that do not tend to the Lords disinheri-
tance; these things are at the most but Finable. *Calthrop. f. 45.*

CHAP. 22.

Who may forfeit: And how.

IN answer to this question these things
things are to be known:

*Non compos
mentis.*

Infant.

1. A Copyholder of *non sane memorie*, an Ideot, or a Lunatick, cannot forfeit his estate.

2. An Infant under fourteen yeares of age cannot forfeit, for he is till then to be in Ward to the next of kinne, or Bayliffe according to the custome of the place. Nor can he forfeit by any negligent or ighorant offence, as non-claim, not coming to be admitted, not repairing, nor maleficans: Thus if he bring a Replevin against the Lord, alien by Deed: or the like Acts: But by a voluntary waste, or obstinate deniall of Rent an Infant may commit a forfeiture. And so he may by doing a Felony. *Co. of Copyholds* 172.

Feme covert.

3. A feme covert cannot by Act she can do alone forfeit her estate; but her husband, or she with the consent of her husband may. Yet if a stranger with the wives consent without the consent of her

her husband commit a waste; this is not a forfeiture. Co. 4. 27. of Copyhold 172.

178. 4. The Gardian of a Copyholder, may forfeit his Wardship, but he cannot forfeit the Copyhold. Co. of Copyhold 172. 173.

Gardian.

5. Cey' que use of a Copyhold cannot forfeit it.

Cey' que use.

6. A disseisor of a Copyhold cannot forfeit it.

Disseisor.

7. He that doth forfeit, can forfeit but his own part; and therefore if there be two Jointenants, and one of them commit a forfeiture; Lease for life, the remainder for life, or in Fee, and the first Tenant for life commit a forfeiture or purchase the Mannor, and extinguish the Copyhold, the remainder is not hurt.

If the husband and wife be joynt-Copyholders of the purchase of the husband during coverture, and he is attainted of Felony, and dieth; his wife shall have all the land. But if the purchase were before the marriage, then a Moytie is gone. Calthrop. f. 92. 97. So where the estate is made to three successive, and one of them doth commit a forfeiture;

ture, this cannot hurt the estate of the other. So where a Copyholder in Fee by license doth make a Lease for yeares by Deed, or without license by Copy, and either of these Lessees commit waste, by this the reversion is not forfeit. *Co. of Copyhold* 172.

8. If a Copyholder be surrendered to the use of *J. S.* he cannot forfeit this before admittance.

9. If one have severall Copies, the forfeiture of one of them is not the forfeiture of the other. *Co. of Copyhold* 174.

CHAP. 23.

Who shall take advantage of a Forfeiture.

Regularly, none may take advantage of a Forfeiture but he that is Lord of the Mannor at the time of the Forfeiture. And therefore if the Copyholder make a Feoffment, and then the Lord doth alien the Mannor; in this case neither the grantor nor the grantee can take advantage of the Forfeiture. And yet if there be Tenant for life of the Mannor, the remainder in Fee, and a Copyholder commit

commit a Forfeiture, and the Tenant for life of the Mannor die before his entry; in this case he in remainder may enter. And he that was never Lord of the Mannor, shall take advantage of the Forfeiture: as where the Lord make a Feoffment of a Copyhold in Fee: in this case the Feoffee shall enter upon the Forfeiture. *Co. 4. 24. of Copyhold 176.*

CHAP. 24.

What Act will be a Confirmation of an estate forfeit.

IN case where a Copyhold is forfeit and the Lord have notice of it, if he shall do any thing afterward whereby he shall acknowledge the Copyholder to be his Tenant: as distrain upon the land for Rent, admit him to be Tenant, or the like: by this the Lord is concluded to take advantage of the Forfeiture. And yet if the Act done by the Copyholder be such an Act as doth destroy the Copyhold: as if he make a Feoffment of the Copyhold or the like: In this case no subsequent Act of the Lord will help. *Co. of Copyhold 176.*

CHAP.

CHAP. 25.

In what Statutes Copyholds and Copyholders are included.

They are expressed in these following Statutes: R. 3. 4. A Copyholder that hath 20^s. 6^d. *per Annum*, may be a Jurer as well as he that hath 20^s. *per Annum*, of Freehold land. 1 Ed. 6. 14. about Abby land. 2 Ed. 6. 8. about Offices found. 1 M. 12. now expired touching the assistance of Justices of Peace to suppress a Riot. 5 Eliz. 14. about Forgery to defraud a Copyholder. 13 Eliz. 7. about the Copyhold of a Bankrupt. 14 Eliz. 6. about his Copyhold that doth depart the Kingdome, without leave. 35 Eliz. 2. about a Recusant. When a Statute doth alter the Service, Tenure, Interest of the Land or other thing in prejudice of the Lord, Custome, or Mannor, or of the Tenant there, the generall words of Tenant, or the like extend not to Copyholders: But when the Act is for the good of the Common wealth, and no prejudice may accrew by reason of any alteration of the

the interest, service or custome of the Mannor, there usually Copyholders and Copyholds are included. *Co.* 3. 8. For this cause it is judged that they are not intended in these following Statutes, (*viz.*) *Westm.* 2. 1. of entailes. And yet by custome such lands may be entailed. *Westm.* 2. 26. Of an *Elegit*. 16 *R.* 2. 5. Of forfeiture of Lands by receiving Bulls, &c. 2 *H.* 5. 7. Of the forfeiture of Hereticks. 27 *H.* 8. 10. Of Uses. 31 *H.* 8. 1. 32 *H.* 8. 31. About Partition 32 *H.* 8. 28. Of Leases made by Tenant in taile, or husband and wife. 17 *Ed.* 2. 18. Of Ideots Lands. *Merton* 1. Of Damages. *Co.* 4. 30. *Westm.* 2. 3. 31 *H.* 8. 13. and that of 32 *H.* 8. 19. Of Champertie. *Co.* 4. 36. 4 *H.* 7. 24. Of Fines, *Co.* 9. 105.

Custome.

CHAP. 26.

How a Copyholder may sue and be sued.

FOR the better understanding hereof, these things are to be known: 1. For any thing which doth concern his Copyhold, he cannot sue or be sued in any reall Action, or Action favouring of the

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reali-

realitie elsewhere, but in the Lords Court: So that if a stranger out him, he must sue by plaint in the Lords Court as his case is. And there the Entries are thus, *A. de B. queritur versus C. de D. de placito terra videlicet de uno mesuagio, 40. Acris terra, 4. Acris prati, &c. Cum pertinent. Et facit protestationem sequi querelam istam in natura brevis Domini Regis Assise mortis Antecessoris ad Communem Legem vel brevis Domini Regis Assise nova Disseisina ad Communem legem, &c.*

Plegii de proseguendo &c.

Litt. Sect. 76.

But he may bring an Action personall in any other Court. And the Lessee of a Copyholder may bring an *Ejectione firme* in any other Court. *Co. of Copyh. 147.*

Ejectione firme. 2. If the Lord out him, he may have an *Ejectione firme*, or Trespasse against the Lord in any Court; but he cannot have an Assise against the Lord. *Co. of Copyhold 146.*

3. A Copyholder of base Tenure in ancient Demesne cannot have a writ of *Droit close* or *Monstraverunt*, but Tenants of Franktenure in ancient Demesne

melius may. *Co. of Copyhold fol. 145.*

4. If the Copyholder by license of the Lord make a Lease of the Land, and the Lessee cut down timber, there being a custome that the Copyholder may cut down timber: the Copyholder in this case, must punish this in the Lords Court.

5. If a wife dowable by custome recover her dower by plaint in the Lords Court, and in the Action she recover damages also, she may not sue for these damages at Common Law. *Co. of Copyhold 140.*

6. If a Copyholder make a Lease by Copy for yeares, or by Deed with License rendering Rent, an Action of debt for this Rent may be brought in any other Court. *Co. of Copyhold, 146.*

7. If a stranger cut down the Trees growing on the Copyhold, an Action of Trespasse lieth against him for this at Common Law. So if the Trees by custome do belong to the Tenant, and the Lord doth cut them down. *Co. of Copyhold 147.*

8. If the Copyholder surrender to the use of the Creditour in trust to pay his debts, and then to have the Land a-

N 2 gain

gain, and he keep it; in this case this being proved by examination of witnesses upon an English Bill, the Lord may releife and restore the Land. *Calthrop. f. 74.*

9. If the Lord have a great waste, and he grant a Rent out of it; the Grantee may distrain the Tenants, unlesse they can prescribe to have Common there. *Calth. f. 97.*

10. If the Steward, Bayliffe, or Tenants, into whose hands the surrender is made, refuse to Present or Admit the Tenant; in this case he is to sue by Bill or Petition to the Lord in his Court. And if the Lord will not there doe him right, the Tenant may sue him and them in Chancery, and there he shall have reliefe. *Co. of Copyhold 189.*

11. For the order of Proces in Suits in the Lords Court, inquire the Custome of the place. And see *Calthrop. fol. 75. 98.*

CHAP. 27.

Of a License to Alien.

FOR this these things are to be known:
1. That the Lord may License his Tenant to let by Deed for yeares if there be a custome for it. And the entrie of this in the Court Rolls is thus. *Ad hanc Curiam ꝑ. S. petit Licentiam Domini demittendi, &c. Cui Dominus Licentiam dat, &c.* And if it be by the Steward. *Cui Dominus per Seneschallum Licentiavit.* Co. of Copyhold 123. 125.

2. This License (it seemeth) is not grantable by the Steward without a speciall custome to enable him to doe it, or a speciall warrant from the Lord to give him power so to doe. Co. of Copyhold f. 124.

Custome.

3. If a Tenant for life of a Mannor grant a License to a Copyholder to Alien, and the Lord die; in this case the License is good. Co. of Copyhold 85.

CHAP. 28

Of a Tenure. 10

A Tenure is the Mannor whereby Lands are holden of their Lords. This seemeth to differ little from Service, for there can be no Tenure without some Service; but that Services seem to be the effect of a Tenure. Touching so much of which as shal serve to our purpose these things are to be known.

1. A Tenure is said to be either Perfect, which is between the very Lord, and very Tenant, or Imperfect, which is between the Doner and Donee, or Lessor and Lessee. A Tenure also is said to be Spirituall, and so it is either incertain, as Frankalmoigne, or certain, as Divine Service: Or it is Temporall. And so it is more honourable, or for a time of warre. Such is all kind of Service in Chivalrie, as Ecuage, Cornage, Grand-Serjeantie, Knights Service in Capite, Knights Service or Chivalrie, and Castle Gard.

2. Or more base, and for a time of Peace; such

such is all Socage Tenure, as Petit Serjanty, Burgage and Socage in Capite. But to hold in Fee farm is no Tenure at all. *Littletons Tenures throughout.*

2. Lands and Tenements doe lie in Tenure, and so (it seems) doth an Advowson in grosse, and of these a Tenure may be laid to be; but not of a Rent. Seigniorie common or the like, except it be in case of the King. *Broo. Tenure. 110.*

3. Any man may extinct a Tenure, but no man but the King can create a perfect Tenure, or alter a Tenure to bring it to another, but in some speciall cases. *Ca. of Copyhold f. 55. Dyer. 84.* And therefore if a Tenant in Fee-simple enfeoffe another in Fee, neither by the expresse reservation of the Feoffor, nor implied reservation of Law can a perfect Tenure be made, the Feoffee shall hold not of the Feoffor, but of the Lord Paramount.

We shall speake but of two kinds of Tenures, Knights Service or Chivalrie, and Socage. And first of Knights Service.

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CHAP. 29.

Of Knights Service.

THis is such a Tenure, as whereby the Tenant is bound to goe with his Lord in the wars, or keepe a Castle, or the like Touching which, this onely for our purpose is to be known.

1. This may be of the King, as when one doth hold of him as of his Mannor Dale, or the like.

2. To this doth belong Aid, Homage, Fealtie, Ward, Marriage and Relief; but it doth not draw any other Land with it, neither need the Tenant to sue Livery for this Land. *Co. 1. part. f. 75. 76.*

CHAP. 30.

Of Socage.

IT is a Tenure whereby the Tenant doth hold of his Lord to pay him some Rent, or to doe him some Husbandry businesse for all manner of Services. Touching so much whereof as is needfull in this place know this.

1. That

1. That it is either free, i. to pay a certain summe of money in lieu of all Services; or it is *villanum*, i. to plow the Lords ground, carry his dung, or the like.

2. To this doth belong Aid and Relief, but not Wardship, Homage, or marriage. Co. 9. 130. Lill. Chap. Sacage.

C H A P. 31.

Of Services.

SERVICE is that duty which the Tenant by reason of his Fee oweth to his Lord. Touching so much whereof as we shall use here, know these things. Services as Tenure do admit of many divisions, some of them are either more noble, as Knights Service and the like, or more base and clownish, as Socage and the like. Some of them were bond, and some free: some of them were reall, as Wardships, Marriages, or the like. And some of them are Personal or Corporall, (1.) to be done by mens persons or bodies; and these again are either of Submission, or of Profit. Of Submission, as Homage and Fealty. Of Profit, and this either

either to the publick profit of the Commonwealth, or private profit of the Lord. To the publick either for defence of the Realm; as first, all kind of Knights Service. Secondly, to repair wayes and bridges. Thirdly, for works of Piety to maintain a Preacher, repair Churches, or the like. Fourthly, for works of Charity, as to marry poore women, or such like. Fifthly, for works of Justice, as to aid the Sheriffe, or the like.

To the private profit of the Lord, as Rent, suit of Court, to be Butler, Baker, or Carver to the Lord.

Some Services are annuall to be paid or performed every yeare, as Rent, suit of Court, and the like.

And some are accidentall to be paid or done now and then, or one time as it falls out, as Heriot, Fealtie and Homage.

These some of them lie in Render, as to pay Rent: some lie in Prender, as that the Lord shall take foure load of wood out of his Tenants grounds. And some of them again lie in User, as that the Lord shall have Common for his Cattle in the Tenants grounds.

They are also divided again into intire

ture Services, as a hors, a spur, or the like.

And into dividable Services, as money and the like: And into certain, and uncertain, and into Services of fidelity, and no profit, or profit and no fidelity. Co. 6.

10. 108. Litt. 122.

If the Tenant or Freeholder refuse to doe corporall Services, as Homage, Fealty, amend high wayes, bridges, or the like, doe the office of a Butler, Carver, Baker, or the like, pale the Lords Parke, tyle his Houses, thatch his Barn, or the like, being bound by his Tenure: the Lord may distrain the goods or Cattle of his Tenant, and keep them till satisfaction. Co. of Copyhold f. 49.

So if a Freeholder refuse to pay his annuall Rent or Service according to his Tenure, the Lord may distrain and avow the taking up of a Replevin. But so long as the rent doth continue of any estate of Franktenant, no Action of debt lieth for the arrearages, no more then for a corporall Service. But after seisin he may have an Affise for the rent. But after the estate is determined, an Action of debt will lie for the arrears of the rent. Co. of Copyhold f. 50. But of this see more at large, chap. 42.

But

But accidentall Services are gotten either by feifure, as a Wardship of the heires body, waifes, estrayes, wrecks, deodands, and such like forfeitures; or by entrie, as the Wardship of the heires Land, So upon Land forfeit to the Lord, upon the breach of some condition, or upon an Alienation in Mortmain, or by feifure or distresse, as Heriots, Service or custome, or by Entry, or Action, as Lands forfeit to the Lord by the cesser of the Tenant, or escheat upon the Attainder of the Tenant, or his death without heire; in the one case he hath a writ *Cessavit*, in the other a writ of Escheate. Or by distresse or action, as reliefs and amercements; for reliefe which is no Service, but the fruit or imprisonment of a Service, the Lord may bring an action of debt or distrain: And for amercements, the Lord may either distrain, or bring an action of debt. Other remedies there are against strangers that detain these Services from the Lord. *Co. of Copyhold* f. 50, 51, 52.

CHAP. 32.

Of Homage and Fealty.

Services of Submission are Homage, and Fealty, which are certain Ceremonies used amongst Tenants, whereby they submit themselves to their Lords, or bind themselves by solemn Oath or faithfull promise, from that day forwards to become the Lords men for life; member, terrene honour, or *ad minimum* to owe him faith for the Lands they hold of him. Touching which these things are to be known.

1. Thus farre these agree, that they are both taken when the Tenant first entereth into his Land.

2. They tend to one end to enforce the Tenant to submit to the Lord. But they differ in many things. First, in doing fealty, the Tenant taketh a solemn oath; in doing Homage, he onely giveth a faithfull promise. Fealty therefore more sacred, Homage more humble. For in doing Homage, the Tenant kneeleth; in doing Fealty, he standeth; in doing Homage, he is uncovered; in doing Fealty,

alty he may be covered; in doing Homage, the Lord kisseth his Tenant; in doing Fealty, not; and in doing Homage, he promiseth to become the Lords man for life, member and terrene honour, but in doing Fealty, he sweareth onely to become the Lords faithfull Tenant: for Homage concerneth warre, and doth properly appertain to Knights Service; but Fealty chiefly concerneth Service at home, and properly appertaineth to Socage Tenure. Albeit Homage may be done by Socage Tenant, and that Homage *ex se*, maketh Socage Tenure, and not Knights Service: yet *Non fuit sic ab initio*. Secondly, none but the Lord in Person can receive Homage, but the Lords Steward or Bayliffe may receive Fealty. And the Lord who hath but an estate for life in his Seigniory, cannot receive Homage, but he may receive Fealty. Thirdly, no Copyholder may do Homage, but he may do Fealty: no Tenant for life or yeares, but in Fee simple or taile can do Homage, but such a Tenant may do Fealty. Fourthly Homage can be but once done to the Lord by the same Tenant, but Fealty may be often. And therefore if lands descend

to me from one, and I do Homage, and after other lands descend from another, I shall not do Homage again, but I shall do Fealty. So if a Copiholder surrender to the use of 7. S. white Acre, for this he shall do Fealty, if he surrender black Acre to his use, he shall do Fealty for this also. *Co. of Copyhold Sect. 19. 20. 21.*

CHAP. 33.

Of Suit of Court.

Suit of Court is the attendance which a Tenant doth owe to a Court: for which these things must be known.

1. That this either reall or royall, which is the Service that men owe to the Sheriffs Turn, and Law dayes, which men are bound to by their Oath of Allegiance there taken, and by their residence and abroad within the compasse of the Leet, and not in respect of the Tenure of their Land: And therefore if one have land in divers Hundreds, and he be distrained where he doth not dwell, he shall be discharged by a writ; And for default of this Service, he may be amerced and not distrained. Or it is
Co.

Covenant Suit, which is where one hath bound himself by Covenant to doe Suit to anothers Court, for remedy whereof he must sue the Covenant. Or it is suit custome, where by the custome of the place, one is bound to do Suit of Court to this or that Court: So are some in the Leets Court, Barons and Hundred Courts. And this is not to be done in respect of a mans resciancy or abroad, but in respect of his Tenure of that Land within the Mannor Hundred or County where the Court is: And for this a man must be distrained and not amerced, or he may be forced by a speciall writ.

2. If the Land to which the Service doth belong, doth come into the hands of divers Parceners, the eldest must doe it, and the rest shall be contributory, and he may be compelled thereto by a speciall writ for that purpose. So where there be many Feoffees for Jointenants, one shall doe the Suit, and the rest shall be forced to contribute. *Br. Suit* 17.

F. N. B. 58.

CHAP. 34.

CHAP. 34.

Of a Gardian, Gard, and Wardship.

A Gardian is one that hath the custody of an Infant being under Age, or of that which is his, or of both. The Ward is the Infant, the custody of an Heire is called the Wardship : And so a Gardein is either by Common Law, or by Custome. By Common Law as a Gardian in Chivalry, Gardian in Nature, in Socage, or because of nurture. The Gardian and wardship in Chivalry is the wardship of such an Infant, whose Ancestor held his land by Tenure in Capite, or Knights Service : And by reason thereof, his Heire be it male or female, and the land must be in the custody and under the protection of the Lord during the Minority. And touching this, these things are to be known.

1. The Lord of whom the land is held by the Tenure shall have this wardship as a chattell to his own use to be sold or disposed, and to go to his Executors as other chattells.

2. He shall have the wardship of the
O Heire

Heire male till one and twenty yeares old, of the female till sixteen, if she be unmarried at her Ancestours death, but if she be married, or above 14. at her Ancestors death she is not to be in ward.

3. This Tenure draweth to it with the land the profit of the Heires marriage, which the Lord will have. *Co. 1. part. Inst. 76. 88.* This Gardian is to take all the profit of the land without waste making, and to keep his goods and chattells safe to the Heires use: he is to give him fit education, and to protect him from hurt, marry him without disparagement, and when he is of age, let him have his land again. Unlessse it be where the Heire marry himself, or will not be married by his Lord, in which case he may keep the land till he be satisfied for the value or forfeiture of his marriage. *Litt. in toto.*

4. If a Childe living, his Father or Mother happen to be in such a case; his Father or Mother, and no other, shall have the Wardship of his body; And then he is called a Gardian in Nature. *Broo. Gardian 110. Plow. 304. F. N. B. fol. 90. 143. Co. of Copyhold 4. 26. 27.*

The Gardian and Wardship in So-
cage

rage is the Wardship of such an Infant, whose Ancestor died seised of Land held by Socage Tenure, or in the Nature of Socage Tenure, as Petit Serjantie, Copy of Court Roll, or the like: And touching this, these things are to be known:

1. The next of kin to whom the heritage by the Heires death will not descend, and that will not have benefit by his death, shall have this Wardship.

2. He shall hold the Land, and take the profits to the use of the Heire onely and not to his own use, onely he shall have reasonable allowance for education and expences.

3. This worship shall continue no longer, but till the Heire be fourteene yeares of age, and then the Heire may call the Gardian to account for the profits of the Land. And if the Gardian marry his Heire before he be fourteene yeares old, he must account to him not onely for the profits of the Land, but also for the marriage, and shal pay to the Heire so much money as was offered him, or he might have had in marriage.

4. This Wardship is annexed to the person of the Gardian, therefore

he cannot grant to another; and if he die before the Heire be of fourteene yeares old, the Executor or Administrator shall not have it, but it must goe to the next of kin: And if a wife have it, it will not be the husbands by marriage as a chattell will be. And therefore in all these respects it doth differ from the Wardship in Knights Service.

5. The Gardians duty is not to doe waste, but to preserve the Inheritance and the writings, and to give the Heire fitting education, and at last to marry him with care, and to the Heires advantage, and not to give or sell the marriage. *Litt. cap. 4. in toto, and Co. upon it. Co. of Copyholdf. 26, 27.*

If a man die seised of a Rent Charge, Common or the like, and his Heire is within age of fourteene yeares, here he may chuse his Gardian, and if he be so tender as he cannot, and the father have made no disposition by his Will, it is fit for the next of kin or Gardian in Socage if any be. However, whosoever doth receive the profits thereof shall be chargeable to the Infant in account. *Co. super Litt. f. 87.*

The Gardian because of Nature
who

who also is called a Tutor, is either *Testamentarius* (i.) such a one as is made so by Will : As when a man dieth with goods or chattells, or lands not held in Knights Service or Socage : or à *Pretore datus*, made by the Ordinary, Touching the first, these things are to be known.

1. If he give his goods and chattells to the childe, and by his Will further appoint some friend to have the government of his childe, person and estate, untill he come to fourteen yeares old : for then he shall be out of Ward for his body, but his goods may be kept longer from him if his fathers will be so. *Co. of Copyhold* f. 23. 24.

2. He may by his Will commit his Socage land to what friend he please, and for what time he please, but so he cannot doe of Knights Service land.

3. If a Copyholder die his Heire under fourteen yeares old, the Lord must appoint his Gardian till he be fourteen yeares old, and the father cannot by his Will prevent it.

The Tutor or Gardian or *Pretore datus* is made by the Ordinary ; which is where the father in the case before doth give the state to the childe, and appoint

no Gardian. Touching which these things are to be known.

1. In this case the Ordinary may appoint one to be Gardian, till the Infant be of fourteen yeares old.

2. After fourteen he is not to have any assigned, for then the rule is *Invito curator non datur*. *Coke of Copyhold fol. 26, 27.*

The Gardian by Custome is of Orphans in the City of London, and other Cities. Some make a third sort of Gardian by Statute Law, as *Coke upon Litt. fol. 38. 6.*

For the getting of a Wardship of the body, it must be by seisure of the Lands, by Entry. *Coke of Copyhold, fol. 51.*

If a stranger detain the Wardsbody or Land from the right Lord, he may have a speciall Writ to relieve himself against him in this Case. *Coke of Copyhold fol. 52.*

CHAP. 35.

Of Aid.

Aid is a yielding of help by one to another to whom he oweth it, and whose case calleth for it; and it is from a Superiour to an Inferiour: As when a particular Tenant is sued, and he in reversion helpeth to defend the suit; or from one equall to another: as when a Parcener is sued for and loseth part of the Land, she shall have aid of her fellow. Or it is from an Inferiour, to a Superiour; So the Subject must help the King by Subsidie: So the Tenant is to aid the Lord, touching which these things must be known.

1. The Tenant by Knights Service, and Tenant by Socage, both are to yield it.

2. Reasonable aid shall be twentie shillings for a whole Knights Fee, of him that holdeth by a Knights Fee in Chivalry, and as much for twentie pound Land held in Socage: & sic pro rata.

3. It is for two ends: To make the

Lords Sonne Knight, and to marry his eldest daughter.

4. That to make the sonne Knight, he may have it at his age of fifteen yeares ; that to marry his daughter at her age of seaven yeares.

5. If he will not pay it, the Lord may distrain for it, or recover it by a speciall Writ for that purpose.

If the father levie it of his Tenant, and die before his daughter be married, his Executor if he have Assets, otherwise his Heire shall answer what he received. *Westm. 1. 35. Coke of Copyhold. fol. 91. 162. F. N. B. 82. Coke II. 44.*

CHAP. 36.

Of Herriots or Harriot.

THis is the best Chattell which the Tenant hath at the time of his death, or Alienation, which he is to render to his Lord : This in some places is his best live beast, some places his best goods : in some places the best upon the Land : in some places his best goods where ever it be. *Coke of Copyhold, fol. 28.*

For

For the opening of this, further know these things :

1. This either by custome, as amongst Copyholders, when it is due and hath been paid time out of mind, according to the custome of the place, after the death or alienation of the Tenant: Or by Service, when there is no such custome in the place, but it is by speciall reservation and agreement that the Tenant shall hold his Land to pay a Harriot at the time of death or alienation.

2. Harriot Service is seldome reserved on any lesse estate then inheritance, but may be reserved on a lesser estate: but Harriot custome is usually paid, or an estate for life or yeares.

3. For Harriot custome albeit the Lord cannot shew the Originall of it, yet if he can shew how it hath been paid from time to time upon the death and alienation of the Tenants it is good.

4. The Lord hath a property in this, and therefore as soon as it happens, the Lord may seize it where ever he finde it; and if it be detained he may have a detinue for it; if eloynd, an Action of the Case; or he may distrain for it if he will.

5. If a woman be to pay a Harriot by custome

custome, her husbands goods shall not be taken without speciall custome. *M.8.*

Far. B. R.

6. One cannot by devise prevent the Lord of this dutie.

7. If the custome be that if he die seised he shall pay it, and he is ousted and dieth before entry, yet he must pay it.

8. For Harriot Service, if it be certain, as a beast, &c. the Lord may either seise or distrain, but if it be incertain, the Lord cannot seise it, but he must distrain for it.

9. If the Lord choose the worst he cannot after help it but is concluded.

28 *Henr. 7. 13. Plow. 96. Kel. 184.*

8 *Hen. 7. 10. Doct. & St. f. 76. March.*

Rep. 23. Broo. Harlots in toto. Co. upon

Litt, fol. 185. 16 Hen. 7. 5.

CHAP. 37.

Of a Reliefe.

A Reliefe is a certain summe of money or other thing which the heir of a Freeholder being of full age at the time of his Ancestours death is then to pay

pay the Lord at the entrance of the Heire into his Land. And this is all the Lord is to have of his Tenant when he is of full age. *Termes of the Law*. And it may be divided into Reliefe, Custome and Reliefe Service. Touching which these things are to be known.

1. This and Harriot agree in some things, but in this differ. First, a Harriot lieth in *prender*, and a Reliefe in *render*. Secondly, a Harriot is paid for a Tenant deceased, a Reliefe for an Heire come to the Land. Thirdly, Harriots are paid by Copyholders, Reliefs by Freeholders onely. Fourthly, Harriots are ever upon some Custome or speciall Reservation, but Reliefs are incident to the Fee, and due without Custome or Reservation. *Co. of Copyhold* f. 38.

2. There is a kind of payment like to this by speciall Custome in some places, also upon the Alienation of the Tenant. *Co. of Copyhold* f. 32. This is paid for Land held in Socage, and for Land held by Knights service, if the King or other Lord have the wardship of an Heire within age at the death of his Ancestor, he shall have no Reliefe at his full age. *Magna Charta*, Chap. 3. And yet if the King

King have the wardship of other Lands by his Tenure by the nonage of the Heire: the Heire when he comes to age must pay a Reliefe to other Lords, and so to the King also if he be to sue out no Livery. *Co. upon Litt. f. 71. Magna Ch. 13. Bro. Reliefe 13.* And generally where one shall be in Ward, if he be within age, he shall pay a Reliefe if he be of full age. *Br. Relief. 12.*

3. This is not alike for all Tenures, or in all places, and therefore incertain: in some places it is by Custome a yeares, in some places half a yeares profit, and there the Custome is to be observed. By Tenure it is more or lesse, and in some Cases to be paid at one time, and in some Cases at another time. Regularly in Case of Knights service, if his Heire be full twenty one yeares old at the death of the Ancestor. The Reliefe for a Dukedome two hundred pound, for a Marquessie two hundred marks, for an Earledome a hundred pound, for a Baronie a hundred marks, for a whole Knights Fee, which antiently was so much as was thought sufficient for a Knights living, a hundred shillings. *Et sic pro Rata.* If the Tenure be by grand Ser-

Serjantie, the Reliefe is the value of the Land for one yeare. If the Tenure be Socage Tenure, or in the nature of Socage Tenure, and the Heire about fourteen yeares old at the death of the Ancestour, the Reliefe is double the Rent: (i.) If the Rent be ten shillings, the Reliefe is ten shillings more, which the Tenant must pay presently: And if he be to pay five shillings at Easter, or a paire of spurs, the Tenant may double which he will, but if he passe the day, the Lord may have which he will. But for Corporall services, as dayes work at Harveft or the like, more Reliefe is to be paid. *Co. upon Litt. fol. 69. 83, 84. 91. 162. Coke 7. 33. Kelm. 136.*

4. For this service the Lord may distrain, and cannot have an Action of debt as some say: And his Executours may bring an Action of debt, but cannot distrain. Others that the Lord may distrain or bring Action of debt. *Co. of Copyhold f. 51.* where it is by Custome the Lord shall have the remedy accustomed.

CHAP. 38.

Of a Fine and Amercement.

THis word Fine is taken in diverse senses, but to our purpose here, It is a summe of money imposed upon a person by the Steward in a Leete, for some offence or misdemeanour committed in his presence: and an Amercement is also a penalty assayed or pecuniary punishment for some offence done by way of Omission or Commission: As touching which these things are to be known.

1. These agree in some things, for they are penalties imposed for offences, but they differ in these things. First, a Fine is commonly for some great offence, and is a greater summe; an Amercement for a lesse offence, and a lesser summe. Secondly, a Fine is in a Court of Record onely, and therefore a Court Baron, which is no Court of Record cannot fine; and therefore this Court can amerce onely: but a Leet may amerce as well as fine. Thirdly, a Fine need not be assayed, but an amercement

mercement commonly so may be, and must be. *Co. 8. 61. of Copyhold f. 40.*

And for so much of this as doth concern our present purpose, these things are to be known.

1. For any misdemeanour in the face of a Court; as if any one use contemptible words to the Jury: A Juror refuse to be sworn, or an Officer of the Court neglect his duty or be corrupt, if it be in a Leet the Judge may fine the offender, but if it be in a Court Baron, he can onely amerce him: And if the offence be *extra Curiam*, the Jury must present it, and then the offender must be amerced by the Jury, except it be by Officers of the Court, for then it may be done by the Steward, and needs not to be assented: Neither if it be a Township or Village that doth offend, the amercement must be put upon the whole.

3. The amercement must be reasonable, otherwise the party grieved may relieve himself by a *Moderata Misericordia. F. N. B. 75. Co. 12. 43. Co. 8. 61. 59. Co. of Copyhold 40. 41. &c.*

CHAP. 39.

Of a By Law.

BY Laws are Orders made in a Court Leet, Court Baron, or elsewhere, by common consent and agreement, for the good of those that make them, to bind them further then the publick Law doth bind. Touching which these things as materiall in this place are to be known.

1. That the inhabitants of a Village, or other such peculiar society, or the major part of them together in their Court Leet, Court Baron, or otherwise by a mutual consent and agreement of such major part may make any Ordinances and Orders for the better government of the place: As for repairing Churches, Bridges, Highwayes, or otherwise for the publick good: And for such like things as these by the very Common Law, without any speciall Custome, this being made by the major part will not onely bind them who did agree to it, but all others of that society, or within the Leet, if it be made there: And they may hereby

hereby make taxes upon all the inhabitants, appoint publick officers to levie them, and penalties, as by another Law. But for such things as concern the private, well and better government of the place onely; without a speciall custome to warrant it, they cannot make such by Lawes; neither will in this Case the greater part bind the rest without a speciall Custome to warrant it. *Co. 6. 63. 5. 63. 11. H. 7. 14. 21. 21 H. 7. 20. 40. 44. Ed. 3. 19 Bro. Leet 34. Prescription 40.*

2. If a Taxe or Amercement be put upon a Village, and the major part agree what every man shall pay, and they refuse, it seems they may appoint one to levie it, and he may distrain for it, and justifie the distresse. *D. & St. f. 74.*

3. No by Law in this Case can be made to imprison the refusers, but distresse and Action of debt in this Case is the proper remedy for a penalty imposed, or breach of a by Law. *Co. 5. 64.*

4. Such by Lawes as are against Law and Reason are void.

5. The Lord may by Prescription distrain for the Amercements upon them, and sell the distresse. *Bro. Leet 34. Prescription 34.*

Distresse.

Imprisonment,

CHAP. 40.

Of a Forfeiture.

A Forfeiture is the effect of transgression of some Law, or of the committing of some offence; by the doing whereof, some reall or personall thing is forfeit. And this may be of Land, or of goods or chartels. And of Lands, it may be either of Copyhold Land, or of Freehold Land; of Copyhold Land we have spoken before in Chap. 21, 22, 23. Touching forfeiture of Freehold Lands these things are to be known.

Mortmain.

1. If any Freeholder doth alien his Land in Mortmain, he forfeiteth his Freehold.

Cessavit.

2. If a Freeholder do cease for the space of two yeares to perform his services, or pay his rent he is bound to by his Tenure, and hath not sufficient goods and Chattells upon his Land, whereby to be distrained, he forfeiteth it.

3. If the Freeholder breaketh any condition whereto he is tied, he forfeits his

this Freehold. Co. of Copyhold f. 44. Ma-
ny other wayes may an estate of Free-
hold be forfeit, of which we shall not
make mention here. And touching the
forfeitures of goods these things are to
be known for this purpose.

1. If a Felon stealeth goods, and up-
on pursuit made waiveth them; and lea-
veth them in any part of the Mannor;
and be not attached upon the fresh suit
of the owner; these goods are a waife,
and forfeit to the Lord who may seise it.

Waif.

2. If any beasts be found wandering
in any place, and taken up and proclai-
med in three market Townes adjoyning,
and not claimed by the owner within a
yeare and a day, this is an estray and for-
feit to the Lord.

Estray.

3. If any suffer Shipwracke on the
Seas, and by the violence of the waves
the goods are cast upon the shore, and
being seised by the Bayliffe, are not
claimed within a yeare and a day, this is
wreck and forfeit to the Lord who may
seise upon it.

Wreck.

4. If any come to an untimely death
without the fault of any reasonable
Creature, the cause of this death as a
Deodand, is forfeit to the Lord, as a

Deodand.

CHAP. 40.

Of a Forfeiture.

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and be not attached upon the fresh suit
of the owner; these goods are a waife,
and forfeit to the Lord who may seise it.

Waif.

2. If any beasts be found wandering
in any place, and taken up and proclaim-
ed in three market Townes adjoining,
and not claimed by the owner within a
yeare and a day, this is an estray and for-
feit to the Lord.

Estray.

3. If any suffer Shipwracke on the
Seas, and by the violence of the waves
the goods are cast upon the shore, and
being seised by the Bayliffe, are not
claimed within a yeare and a day, this is
wreck and forfeit to the Lord who may
seise upon it.

Wreck.

4. If any come to an untimely death
without the fault of any reasonable
Creature, the cause of this death as a
Deodand, is forfeit to the Lord; as a

Deodand.

tree, or cart with horses falling, or horse striking, these are all of them Deodands. And many other wayes may goods and chattells be forfeit, whereof we cannot speak here. And these albeit they be not incident to Mannors, yet most Lords of Mannors claim, and may have them by Prescription or Patent from the King. *Co. of Copyhold. f. 44. 45.*

CHAP. 41.

Of Escheat.

Escheat is where a Tenant in Fee-simple Land dieth, not having heire generall or speciall to be capable of the Inheritance, in this Case the Lord shall have it. Touching which, these things are to be known.

1. There are two causes of this Escheat. First, attainer of the blood by doing of Treason or Felony. Secondly, fayler of the blood by extinguishment or Bastardy.

2. There can be no Escheat of entayled Land, but of Fee-simple Land onely.

3. There shall be no Escheat of things in Action, Uses, Condition, Rights of Entry

Entry and Action, but of Land onely:

4. If all the Heires be dead, and there is no Heire to be found of the Land, or the Ancestours bloud is corrupt by Treason or Felony done by him; or the Ancestour be a Bastard and die without issue of his own body, for no other body can be Heire to him, nor can he be Heire to any other; in all these Cases the Lord shall have the Land by Escheat.

5. If the Bastard or Tenant be disseised, and die without Heire, yet the Lord may enter: But if the disseiser die, or alien the Land to another *bona fide* *Quere.* before entry, the Lord cannot enter. But in all other Cases the Lord may enter for the Land or maintain an Escheat for recovery of the Land. *Co. of Copyhold* f. 48. *upon Litt.* 268. 312. 314.

6. In Case of Treason the King shall have the forfeiture, and in Case of Felonie he shall have *annum diem & vasstum*: and then the Lord shall have it, and till then the Lord is not to have it.

7. But before the Lord in this Case is to take advantage of it, the Homage where there is a Court shall do well to Present it; and then Proclamation is to be made, That if any shall come in and

make a just Claim to it he shall be received, which no man doing, the Title is clear in the Lord. Co. of Copyhold f. 48.

Our subject matter in hand being about the Profit of a Mannor, the Services, Duties and Performances of the Tenants, and the payment of Rent being a speciall part thereof, we shall adde this Title by way of Appendix alone and by it self, and so end this Treatise.

CHAP. 42.

Of a Rent.

What it is, and
the kinds there-
of.

A Rent is a summe of money or other consideration issuing yearly out of Lands or manuell Tenements; *Redditus à redeundo quia retro it, vel à reddere. i. retro dare.* This differeth essentially from an Annuity, for a Rent doth alwayes issue out of Lands or Tenements, and the Land also is the debtor. Otherwise it is of an Annuity which is chargeable upon the person of a man onely, and he alone is the debtor for this. *Co. upon Litt. 141. 142. Plow. 132. 138. 139.* And of Rents there are said to be three kinds.

1. Rent

Of Tenures.

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1. Rent service, which is, where a man doth hold his Land of his Lord by Fealty and certain Rent, or to render and yield hens, capons, roses, spurs, bows, arrowes, horses, wheat or the like; or to perform any Office, or yield any attendance or the like: And to this Rent distresse is incident of Common right.

Rent service
what it is.

2. Rent Charge, which is where an estate is made of Lands or Tenements to another, in Fee-simple, Fee-tayle, for life or yeares, rendring a summe of money, or other thing to be paid yearly to him that made it and his Heires; and there is a Clause in the Deed, that if the Rent be behind, it shall be lawfull for the Feoffer, Lessor or Donor to distrain for it upon the Land. Or where one doth grant a Rent out of his Lands or Tenements to another in Fee for life or years, with such a power to distrain for the Rent, if it be behind; and to this no distresse is incident of common right, but by the agreement of the parties, the Land is charged with the distresse; and hence it is called a Rent charge.

Distresse.
Rent charge
what it is.

3. Rent seck is where a Rent is reserved or granted (as in the Case before) without any Clause of distresse,

Rent Seck what
it is.

or power to distrain, and this is called *redditus siccus*, a dry Rent; because he that is to have it, till he hath gotten seisin of it, he hath no remedy to recover it, if it be denied to him; and then he hath no other remedy but an Assise for the recovery of it. *Termes of the Law Rent. Co. upon Litt. 142. Litt. chap. 12. Fines ley. 155. Do. & St. chap. 30.*

And regularly, a man cannot have or challenge, or make a Title to any kinde of Rent, unlesse it be a Rent Service, or a Rent Charge in the case of Prescription, or for equality of Partition, unlesse he have a Deed to shew for it. *Co. 6. 63. Litt. 40. Co. upon Litt. 142. 146.*

2. *What kind of Rent it is.*

Rent service.

IF one be seised of Land in Fee, and make a gift of it in Tayle, or make a gift in Tayle to one, the remainder in Tayle to another, or a Lease for life or yeares, keeping the reversion in him, without any Clause in the Deed inabling him to distrain for it, this is a Rent service. And if he in reversion grant away his Reversion to another, and the Tenant attorn; this is a Rent service still.

still. But if the Reversion be gone, it doth continue no longer a Rent service, for there can be no Rent service but where there is a reversion. *Litt. Sect. 214. 215. 228. 229. Plow. 132. 142. Co. upon Litt. 162.*

Rent Seck.

And therefore if one by Deed indented make a Feoffment in Fee to one, or a gift in Tayle, or a Lease for life or yeares, to one with the remainder over to another in Fee, and reserve a Rent upon any such estate without any clause of distresse for not payment; this is a Rent seck, not a Rent service. So if one seised in Fee of Land by Deed Poll or Indenture, grant a Rent issuing out of his Land without any clause or distresse for not payment; this is a Rent seck. *Litt. Sect. 214. 215. 217. Co. 6. 58. super Litt. 150. 151.*

If there be Lord and Tenant, and the Lord grant the Rent except the Fealty (which is incident to every Rent service) this is a Rent seck. *Perk. Sect. 113.* So if one hold his Land by Homage, Fealty and other Services, yielding a Rent, and the Lord grant away the Rent reserving the Services, or grant the Services saving the Rent; in these cases the
Rent

Rent is a Rent seck, *Litt. Sect. 226. 227. Co. upon Litt. 151.*

If one Lease Land to another for life rendring Rent; and after he in reversion grant away this Rent, to another; this during the life is a Rent seck. *Litt. Sect. 228.*

It is said if a man grant a Rent out of three Acres, and grant over, that if the rent be behind, that he shall distrain for the rent in one Acre; this is a rent seck in all, and yet he may distrain for this in the third Acre. So if a rent be granted to one, and his Heires out of an Acre of Land, and that it shall be lawfull for him to distrain for Tearn of his life; this is a rent charge for his life; but after a rent seck. But if it be that he shall distrain for a certain number of yeares; this is a rent seck alwayes. *Co. upon Litt. 147.*

Rent Charge.

If one devise a rent by Will in Fee-simple, Fee-tayle for life, or for yeares without any clause of distresse; this is a rent seck: but if it be with a clause of distresse, it is a rent charge. *Co. 6. 56. Dyer. 348.*

If one make a Feoffment in Fee, gift in tayle, lease for life or years of land to
one

one, or a gift in tail, leaf for life or yeares, with the remainder over to another in fee, and upon any such estate reserve a rent, and in the Deed there is a power to distrain in the Feoffor, Donor or Lessor, if the rent be behinde; this is a rent charge, *Co. upon Litt.* 143. *Plow.* 132. *Litt. Sect.* 217. So if one by Indenture or Deed Poll, grant a yearely rent to be issuing out of his Lands to another in Fee-simple, Fee-tayle, for life or yeares, with such a power in the Deed, 13. *Ed.* 4. 6. 5. *H.* 6. 6. *Litt. Sect.* 218. So if the Tenant of the Land chargeable with a Rent seck, grant a power to distrain upon the Land for the rent to him that hath it; this is now become a Rent charge. *Dyer* 348.

So if one Coparcener upon a partition to make an equality, agree that the other shall have a rent out of his part of the Land; this is a rent charge for which the other may distraine, though there be no Deed for the Rent, nor Clause of distresse in a Deed. 15 *H.* 5. 5.

And if one Coparcener upon a partition to make an equality, agree that the other shall have a rent out of his part of the Land; this is a rent charge for which the other may distraine, though there be no Deed for the Rent, nor Clause of distresse in a Deed. 15 *H.* 5. 5.

In respect of
thing out of
which it is gran-
table.

*What shall be said a good rent by
grant or reservation, or not;
and how it shall be taken.*

IF a Feoffment, gift in Tayle or a Lease
be made of a Mannor, Lands, Mea-
dowes, Pastures, Mill, or any such like
corporeal hereditament rendring a rent,
or a rent be granted out of any such
thing, it is good: So if it be out of the
vesture or herbage of Land, or a re-
story or a mesuallty. But a grant or re-
servation of a rent out of a thing not
maynorable: as a Faire, Market, Rent,
Tythes, Advowson, Hundred, Fishing,
common Office, the next avoydance of
a Church, right of Land, Corrody, Mul-
ture of a Mill, Franchises and the like in-
corporeall Hereditament is not a good
rent; for a rent must be alwayes reser-
ved out of such a thing to which the
party may resort for a distresse. Co. 7.
27. 38. Co. 4. 10. 49. Plow. 157. 138. Co. 1.
part. 47. And yet if one be seised of a
reversion or remainder of Land after a
Lease for life, or yeares, or gift in tayle,
and grant or reserve a rent upon this
Land; this is a good rent, and when it
comes in possession either by determi-
nation

nation of the time in course, surrender, or otherwise, it will take hold of the Land. Co. upon Litt. 144. 47. Plow. 198.

If one that hath but a Lease for years of Land, make a Lease of it rendring rent or grant a rent out of it; this is good during the Tearme; and if he grant for longer time, it is good during the Tearme. *Co.* 2. 36. 14 *H.* 7. 2. But if one be seised in Fee of white Acre, and possessed of a Tearme in black Acre, and grant a rent out of both these for life, this rent shall issue out of white Acre onely: Yet both the person, and both the Acres shall be charged as long as the Tearme lasteth; and after the person and white Acre onely. *Co.* upon *Litr.* 146.

Co. 7, 23rd Dec. 1884

If one be disseised of Land, and after grant a rent out of it; this is void. And yet if the grant be by Fine or Indenture, it may be good by way of Estoppel.

Co. 2, 5345 94 1016 noisqruon9 ieiw9l s

If one grant a rent, reserving a rent; or grant a rent issuing out of another rent; these grants and reservations as to create a rent are void. Co. 10 B. 1. 59. And yet in the cases before of a rent granted or reserved out of things not mayno-

Annuitie.

In respect of
the manner of
granting or re-
servation.

maynorable, albeit the grant or reservation cannot be good as to the creation of a rent to charge the thing out of which it doth issue; yet it will be good to create an Annuity to charge the person of the grantor. *Keble. 161. Co. 6. 58. 10. 93.*

A rent may be granted or reserved by Fine or a Deed of bargain and sale, as well as upon a Deed of Feoffment or Lease. *Co. 2. 72. Stat. 27 H. 8. chap. 10. Co. upon Litt. 144. 195.* A rent may be reserved on a release that doth enure to enlarge or make an estate; but not upon a release that works by way of extinguishment or *mettre de droit*. A rent may be granted by will also, and therein also may be given a power to distrain as well as by Deed. *Co. 8. 84. Dyer. 348.* But it cannot be had or claimed, nor is it grantable but by Deed, except in some special cases. *D. & St. 86. Bro. Reservations.* As upon a partition of Land, and by a special Prescription that he and his Ancestors whose heire he is, have been seised of it, and used to distrain for it. *Co. upon Litt. 146. 144. Co. 6. 58. 63.*

If one having an estate in white Acre grant *xx. extra* [or *de*] white Acre; or *xx. Annui redditus de 9. S. annuatim* percept.

percept. de white Acre, or percipiend^o apud white Acre, or percipiend. in vel ad white Acre; or out of his coffers with a clause; that if not paid he shall distrain in white Acre for it. Or thus, Obligo me f. S. & heredibus suis in annu- ali redditu de xli. quem percipio de ma- nerio meo de S. & obligo manerium pre- dictum ad distringendum. Or thus, if one have a Mannor and say, Obligo manerium meum de C. & omnia bona in dict^o mane- rio existen. f. S. in annuo redditu xli. ad distringendum per ballivum Domini Regis pro redditu predicto. But if one by Deed in a way of Covenant to pay xli. a yeare and not by way of reservation or grant to do a thing & varies quociens defectus fuerit, that he shall forfeit xli. these and such like are not rents but **summes in grosse**, nor recoverable as rents, but by action of debt or covenant. Dyer 361. Plow. 133. Dyer 24. And if one grant 40li. a yeare out of his coffers, or out of his clear gains, or out of the Land of a stranger, or out of a thing not charge- able with a rent; in these and the like cases it is not a Rent but an Annuity chargeable on the person onely. Co. 6. 58. 10. 93. All grants of rents after either

Summe in grosse.

Annuity.

of

of these, or in any such like form may be good to charge both the person and Land. 46 Ed. 3. 48. Co. 7. 23. *Kelm.* 161. 14. Ed. 2. 15. 46. 22. *Aff.* 66. 21. *H.* 7. 4. *Dyrr.* 45. 25. *H.* 8. 5. *Co. upon Litt.* 145.

If one grant a rent out of all his lands and that if it be behind, he shall distrain in white Acre for it; this is good to charge the person and white Acre only, not any other Land. Co. 7. 23. So if he

1 *Inst.* 147. 2
Contra:

*Both the Mannors are charged, the one with the Rent, the other with the distress for the rent: and not both with the distrain.

grant it out of one Acre and it be behind, that he shall distrain in another Acre; the rent doth issue out of one of them, * but both are chargeable with the distress. *Co. upon Litt.* 147. 9. *H.* 6. 9.

If one grant to another that he shall distrain for a rent of 40^s a year in white Acre, if it be not paid him yearly at Michaelmas; this is good to charge this Land, but not to charge the person of the grantor. *P. lom.* 139. *Co.* 7. 24. *Litt.* 219.

220. If I have twenty Acres of Land and grant a rent of xx^s (*percipiendum de quolibet harrate*) this is a good grant, and severall out of every Acre xx^s xx^s in 10th to *Co. upon Litt.* 147.

If a reservation of rent be in a Deed, and say not to whom, yet this is a good rent, and shall continue as long as the

estate,

estate, and shall go to the heire or him in reversion. *Dyer* 45. *Kelw.* 88. But if it be rendring a rent to a stranger who is no party to the Deed, this is void. 27 *H.8.* 19. And yet if he be a party to the Deed, although he have no interest in the Land, it is good enough. *Bro. Reservation* 15. 12. *Plam.* 155. And if the reservation of the rent be to the Lessor, and a stranger who is no partie to the Deed, it is void as to the stranger, and the Lessor shall have the whole. So albeit the Lease be made by the Father, and his eldest son rendring rent to the sonne, or a Lease to begin after the fathers death, rendring rent to the sonne. *Trin.* 12. *Jac. Oates Case Adjudge.* If the estate be void upon which the render of rent is made, the rent is void also. 14 *Car. B. R.* If Lands be given in franck marriage reserving a rent, the reservation is void till the fourth degree be past; and then it is good 26. *Ass.* 66.

If one seised in Fee of land grant a rent out of it to *J. S.* for life, and after a clause that he and his heires may distrain in the land for the rent; this is a good new grant of a new rent in Fee-simple over and above the grant for

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life.

life. *Coke upon Littleton*, 147. 148.

If one by Deed indented demise to A. for life with drivers remainders over *Reddend inde* to the Lessor and his heirs a Rent; this reservation shall extend to all the estates, and if he in remainder accept the estate, he must pay the rent. *Co.* 10. 107. 5. 111. And if one Lease for a yeare with these words; and if the parties shall agree for a new Lease for longer time then for three yeares: *Reddend durante termino predicto*: This reservation shall extend as well to the first year as to the three last yeares. *Co.* 10. 106.

If one grant a rent charge out of his Land, provided that it shall not charge his person in an Annuity, this is a good rent as to charge the Land, but not the person. And yet if it were without clause of distresse with such a proviso, the proviso were void unless the grantor did give the grantee seisin of the rent at the time of the grant. *Co.* 6. 58. *super Litt.* 146.

4. The remedy or means to recover a rent, and the arrearages thereof.

If one have a Freehold rent and have gotten actuall seisin thereof, and be after

after disseised of it, he may have an assise to recover it, and damages for it, which in an Assise he shall recover, but in a Rescous he shall recover damages onely, and the thing distrained shall be taken as a distresse. But, if one that never had seisin of a rent distrain, and a Rescous be made, he cannot have an Assise, but he must have a Rescous. Co. 7. 97. And here note that the disseisin of a rent is when the party is disturbed in the means of recovery of his rent, which for a rent charge is said to be five wayes.

1. By Rescous, which is when the party is distrained, and the distresse is rescued, or being upon the land to distrain cannot be suffered.

2. Replevin, which is when an action of Replevin is brought upon the distresse taken.

3. Denier, which is the denying or not payment of the rent on the Land when it is required.

4. Inclosure, which is when the party doth come to the place whence the rent doth issue, or he hath power to distrain and it is inclosed by walls or the like that he cannot come at it; but if it be not newly, but were anciently inclo-

sed, then were it no disseisin.

5. Forestalling, which is when the party is going to distrain for the rent, and the Tenant hearing of it doth forestall the way with force and armes, or threaten to kill or wound, so that he dare not go to distrain. The disseisin of a rent service is said may be by Rescous, Replevin and inclosure. The disseisin of a rent seck is said to be by denying, inclosing and forestalling. *Coke upon Litt.* 160. 161. 153. *Litt.* 236. 237. 239. 240.

In some cases a man may have an Assise to recover his rent; in some cases he may distrain; in some cases he may have an Annuity or an Action of debt; in some cases he may Reenter upon the Land for not payment of the rent; and in some cases he hath his choice to doe the one or the other: but in case where a man may distrain, he may not distrain in any place but there where the distresse is given. *Litt.* 48. *Plow.* 239. nor may he distrain after the estate is ended; nor may he distrain and keep the goods against a Replevin; albeit the Deed say he shall keep the distresse against gages and pledges. *Co. upon Litt.* 145. 282.

If

If one at Michaelmas make a Lease for yeares rendring rent at Michaelmas or ten dayes after, in this case the Lessor may bring an action of debt for the last yeares rent, and suppose it to be due at Michaelmas. *Barwick's Case Trin. 9. Jac.*

If a Lease be made rendring rent on condition of reentry for not payment, and the Lessor reenter, yet he may bring an Action of debt for the rent. And in the case where a Reentry is given if the Lessor make a demand duely; if after he receive the Rent, yet it seems he may enter upon the Land. *Kelw.*

112. 153.

The Lord may distrain for a yearly Rent service, rent due from a Freeholder, but he may not have an Action of debt for it, or for any corporall service as long as the same doth continue; but when the rent is ended, an Action of debt will lie. *Co. of Copy-hold* 50. But some say that for a rent service due upon a gift in Tayle or Lease for life, he may onely bring an Assise or distrain; and that an Action of debt lieth onely for a rent service reserved upon a Lease for yeares. *Litt. Sect. 213. 331. Perk. Sect. 693.*

If one that hath a Lease of Land for

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yeares,

years, grant it over for a part of the time remaining rent; in this case the Lessor may distrain or have an Action of debt for this rent, and therefore it is taken for a lease service. *Plow. 521. 9 H. 5. 8. Perk. Sect. 693.*

Rent charge.

If a rent charge be unpaid, the party that ought to have it may in some cases have an Assise for it, and in all cases either distrain for it, or he may bring an Annuity against the person of the Grantor at his election, except one of the remedies be prevented by the Original agreement; as where a rent is granted, provided it shall not charge the person of the Grantor, &c. But where the party hath a double remedy he may not make use of both; for if in case where the person is chargeable and the Writ of Annuity doth well lie, if he bring this Writ or an Assise where it lieth, and make his plaint in the Assise, or declare upon the Writ of Annuity; by this the Land is discharged for ever. And if he once distrain and avow for it in a Court of Record, by this the person is discharged for ever. But the bare purchase of the writ of Assise or Annuity only doth not determine the election.

on.

on. *Dyer* 344. *Litt. Sect.* 219. *Co.* 7. 24. *Plow.* 13. *Dyer* 362. *Co.* upon *Litt.* 145.

If one have a rent charge for yeares, and the Term expired, in this case he cannot distrain for the rent; per two Justices, *Pas.* 10. *Car. B. R.* but he must have an Action of debt for it.

If a rent charge be granted with proviso, that it shall not charge the person of the Grantor, and the rent is behind, and the estate is determined, so that now he may not distrain for it; in this case he may bring an Action of debt, and charge the person. *Co.* 7. 37. *Dyer* 227.

If one have a rent seck and it be not paid, he may distrain for it in three cases. First, where a woman hath it in part of her dower. Secondly, when the King is to have it. Thirdly, when a Parcener is to have it to make an equality of partition. But in all other Cases there is no remedy for recovery of a rent seck but by an Assise; nor can this be had neither, till he have got seisin of the rent in a legall way. *Kelm.* 104. *Co.* 7. 28. 6. 56. 58. *Litt.* 235.

Rent Seck:

Q 4

5 Wha

5. Who shall have the rent and remedy, and upon whom shall it be charged or not.

The rent in most cases doth follow the reversion of the land if there be any, as the shadow doth the body. *Co. 5. 55.* *Dyers.* Recoverers upon common recoveries shall have the same remedy for their rents by distresse or action of debt against the Lessee for years before attornment as the recoverees had. *Stat. 7 H. 8. chap. 4. Co. upon Litt. f. 104.*

Executors shall have the like remedy for rents charge, and rent services due to their Testator as their Testator had; and for the arrerages due in their Testators time, they may distrain the Tenant of the land whether he be heire or Feoffee to him that should have paid it, or heire or Feoffee of the heire, or Feoffee & so *in infinitum*, issues in taile or *Cestuy à que use*, or any other that come into the land from or under him that should have paid it. *Stat. 32 H. 8. chap. 37.* If I make a Peoffment in Fee, gift in Taile, Lease for life or yeares of land rendring rent to me, or a rent be granted out of land to me in Fee, in Taile or for life, and the rent be in arrear, and I make my executor

ecutor and die, and the land or rent descend to my heire; my executor and not my heire shall have it, and the action of debt for it. *Co. 4. 48. 50. Dyer 375. Ca. upon Litt. 1. 62.* If a rent be granted to me, my heires and executors during the life of *J. S.* and for one half yeare after; in this case my executor shall have this half years rent. *Curia M. 7. Jac. Co. B. Watts Case.* But if a Lease be made for yeares rendring rent to the Lessor and his heirs at Michaelmas, or within ten daies after; and the Lessor during the Tearme doth hap to die after Michaelmas before the ten daies be expired, in this case the heir, not the Executor shall have the yeares rent. *Hill. 7. Jac. Curia B. R.* And if within the ten dayes he had granted away the reversion and the Tenant had attorned, the Grantee of the reversion shall have the rent. *Co. 11. 12.* If one seised in Fee of land make a Lease for yeares of it rendring rent, and then devise the rent to a stranger by will, and the Devisee dy; in this case it seems the executors must have it, not the heire. *Dyer 5. 6.* If the reservation of the rent be to no body, the arrears shall go to the executor, and the rent forwards as in the cases before. So if the

the reservation be to him or his heires;
Dyer 504. If one leased in Fee of a house,
 and make a Lease thereof, and of certain
 implements therein for years, rendering
 rent to him, his heires and assignes, and
 the Lessor die, in this case the rent shall
 goe to the heire all the time. But if the
 Lessee had covenanted to pay so much
 money during the time, this summe had
 gone to the executor. *Dyer* 361. 275. And
 if one grant a rent for life out of his
 land, and the rent is arrear in divers Fe-
 offees time one after another, and the
 Grantee die, his executors may have an
 action of debt against every one of the
 Feoffees for his time. But if a Tenant in
 tail make a Feoffment and the discon-
 tinuance charge the land, and a for enseoff
 the issue in taylor and die, the issue is re-
 mitted to his first estate, and shall not be
 charged with this rent. *Co.* 7. 37. So if one
 have a rent charge or rent service in Fee,
 or for life and it be arrear, and after he
 grant away the rent to another, and the
 Tenant attorn, and then he die, in this
 case the executor shall not recover the
 arrears, but they are lost. *Co.* 7. 37.

If one have a rent charge or rent ser-
 vice *pur antier vie*, and the *cr.* *quo vie*
 die,

die, yet the party may have his remedy against the occupier of the Land by distress: As if one devise a rent out of land by will, with clause of distress to B. for the life of C. and the heirs to whom the land charged doth descend, doth Lease it to D. the remainder to E. in Fee; and the rent is behind in the life of D. and D. die, and after C. die: now in this case the land in the hands of him in the remainder shall be charged with these arrears, and the party may distrain for them. *Stat. 32 H.8. ch. 37. Co. 118.*

All arrearages of rent incurred and due to the wife before or after marriage, the husband shall have if he survive her, as if she be endowed of a rent, and take a husband and die, he shall have the rent arrears during the coverture and remedy by the Statute of 32 H.8. Co. 431. *super Litt. 351.* So if he make a Lease of his wives land rendering rent, and she dye, he shall have the rent due in her life time. *9 H.6. 52.* And yet if the husband be seised of a rent in the right of his wife and the rent incur, and the husband die, in this case the wife shall have the arrears: *per 3. Justices: 22 Jac. B. R. 2 H.6. 43. 29 Ed. 3. 40.* If any rent charge, or rent

rent service be due to any single woman, who doth after marry, or to any married woman during the coverture; in these cases the husband, his executors or administrators shall have the same remedy by distresse or action of debt as the wife had. As if a feme sole have a rent charge granted to her for life, and the rent be behind, and after she take a husband, and the rent be behind again, and she die, the husband may recover both these rents. *Stat. 32 H. 8. Ch. 37. Co. 4. 50. F. N. B. 121. Co. upon Litt. 162.* If one grant a rent charge to *A.* and *B.* for 21. years if the Grantor live so long; and after *A.* and *B.* entermarry, and then the rent doth incur, and *A.* die, and after more rent doth incur; in this case the woman and not the executor of her husband shall have all the rent before and after the husbands death. *Hill. 22. Jac. B. R. Curia in Burgers Case. 33 H. 6. 20.* If a woman and her second husband Lease the Land she was endowed of by her first husband, rendering rent, and this is behind and she die, the second husband, not the heire of the first husband, shall have this rent. *Bro. Rent. 10.*

If a man seised of a Tearme of Land
for

for 20. yeares in the right of his wife, Lease the same Land for 10. yeares to a stranger rendring rent, the rent is behind, the husband die, it hath been said the wife and not the executor shall have the rent. *Perk. Sect. 834.* But the contrary hath been adjudged *inter Blaxton & Heath Banco Regis Co. upon Litt. 46. 35.* Yet the wife shall have the rest of the Term. If the husband be possessed of a Term of land in the right of his wife, and he let part of it rendring rent and die, the wife shall not have this rent, but the executor of the husband. *Dyer 180.*

107. 104.

If *A.* a Tarmor die, and make *B.* his executor: and *B.* make a Lease of part of the Term to *C.* rendring rent, and *A.* intestate, and *D.* get an administration of the goods of the first Testator, in this case *D.* shall not have the rent. *per Justice Haughton Hill. 18. Jac. B. R.* because he comes about it. And if *A.* Tenant in taile discontinue to *B.* who doth Lease to *C.* for years rendring rent, arrearages doth incur, *A.* dies, his issue doth recover against *B.* in a *Formedon.* Yet the Lessee shall pay the arrearages to *B.* *per Justice Haughton. 18. Jac. B. R.*

If

If one feised of land as heire *ex parte matris* and make a Feoffment in Fee of it rendring rent to him and his heires; this rent shall go to the heires *ex parte patris*; but if it had been a Lease for life, or gift in taile, it had gone to the heires *ex parte matris*. If the husband have a Lease in the right of his wife rendring rent, and the rent is behind during the Coverture, and she die; in this case he shall be charged by a suite for this rent after her death. *Kely. 61. 10 H. 6. 11.*

Where a rent shall be said to be determined and extinct in all or part, or not; but shall be apportioned, and where it shall be apportioned, or not.

Where the estate to which the rent is annexed doth determine, there the rent as to the Land is determined. And yet there in some cases the person shall be charged after with it in an Annuity. If there be a Lessee for life or yeares, determinable upon life, and this Lessee make a Lease for yeares reserving rent to be paid at the 4. quarter Feasts, and the life die, the rent is gone; and if he die before the quarter day, the quarters rent is gone. *Co. 10. 127.* So if one make

make a Lease at will rendering rent, and after the Lessor doth determine the will, the rent is gone. *Tennies Ley.* So if a rent be granted in respect of an Office, and the Office be determined, the rent is gone. *Plow. 381.* If all the Land, out of which the rent issueth, be recovered from him that hath a Title before the day of payment, as if there were a Judgement against the Lessor before the Lease and after the Lease, execution is sued out by an *Execr.* or otherwise: so that the Lessee is rightfully evicted out of all the Land, or a disseisor charge the Land, and the disseisor doth recover it in an Assise or the like, in these cases all the rent is gone. But if the eviction be but of a part of the Land, there shall be an apportionment of the rent. And if one that hath land rightfully charge the land, and another that hath no right doth recover it in a fained action, this will not determine the rent. *Co. 10. 127. Plow. 71. 134. 37. Eliz. B. R. Dyer's Case.* And if a Disseisor release his right to the Disseisor after his grant of the rent charge, the rent will continue. But if the disseisor enter and make a Feoffment, by this the rent is gone. *Compton Lib. 177.*

If

In If a rent be granted to one, and his
 heires in Fee, or to a Corporation in Fee,
 and the man die without heire, or the
 Corporation dissolved, it seems the rent
 is gone. 27 H. 8. 10. If *A.* give lands to
B. and the heires of his body rendring
 rent, and *B.* doth bargain and sel the land
 to *C.* and his heires; and therein Cove-
 nant that *C.* shall enjoy it after the An-
 nunciation of Mary next free from all
 incumbrances, and before that day a
 common recovery is had against *C.* in
 which *B.* is vouched to the use of *C.* and
 his heires; in this case the rent is not
 gone. *Hill. 20 Jac. B. R. Greenway and*
Tuckfields Case. Error Case 42. Eliz. Co.
B. For this rent is reserved by the donor
 before, or at least at the time of the en-
 taile made; and is as if Tenant in Tayle
 grant a rent charge out of the Land,
 and then suffer a Recovery, this doth
 affirm the rent: or as when the Lord
 Paramount doth purchase the Tenancy
 Paravayle, the Mesne shall have the rent.
 But if after the entaile made, the donor
 doth grant a rent out of the Reversion,
 and after the Tenant in taile suffer a Re-
 covery; in this Case the rent is gone.
Co. 1 in Capells Case.

If Lessee for life make a Lease for yeares rendring rent, and after the Lessee for life surrender his Lease, the rent is gone. *per Ch. Justice Bridgman*. But if one make a Lease for yeares rendring rent, and after grant the rent to *J. S.* and the Tenant attorn, and after the Lessee for yeares doth surrender, yet the rent doth continue, and it seems he may have an Action of debt for it. So if Lessee for yeares of land grant a rent charge out of the land, and then surrender his estate; the rent is not gone. *Co. 8. 144. 30 Ed. 4. 13. Plow. 198.* If there be a Lessee for life rendring rent, and the Lessor confirm the land to the Lessee and his heirs without any reservation of rent; in this Case the rent is gone. *Bro. Extinguishment. 28.*

If two Joyntenants be, and one of them grant a rent out of the land and die; in this Case the rent is gone, and the survivor shall hold it discharged. But if the Survivor had accepted a Release of the right of his companion, *contra. Co. 6. 16.*

If one have a rent charge issuing out of land to him and his heires, and he purchase the Fee-simple of all or any

R

part

* That is, the whole Land, for if the Son hath a Rent charge, and the father purchaseth part of the Land which descends upon the son, the Rent charge is not extinct, but apportioned.

part of the land, out of which the rent doth issue; by this the rent is gone for ever. *Co. 4. 38. Di. & St. 35. Dyer 45.* So if the * Land descend to him in Fee-simple, the rent in future is gone. *Co. 4. 49.* and he hath not so much as an Annuity left for his money. *Co. upon Litt. 148.* As he hath in case where the discharge is by Act of God, or by Act of Law; for there though the rent be gone, yet a writ of Annuity will lie for the rent to charge the person; as if *Tenant per annum* grant a rent charge to one for 21 yeares, and *Cestui que vie die*, the rent is gone as to the land, but the person chargeable during the Tearme. So if the land out of which the rent issueth is recovered by one that hath an elder Title. *Co. upon Litt. 148.* But if a man that hath a rent service purchase part of the land, out of which it goeth; in this Case the rent if it be severable shall be apportioned, but if it be an indivisible rent, as a horse or the like, it is all gone. *Litt. Sect. 222.* And if the Grantee of a rent charge purchase part of the land, and the Grantor by his Deed reciting this purchase, doth grant that he shall disstrain in the residue, by this the rent may

may be continued * *Co. upon Litt. 148.*
And yet if he that hath a rent charge release part of it to the Tenant of the land and reserve the rest; this is good for the rest. Or he may grant away part of it, and with the attornment of the Tenant this will be good, and the rent shall be divided. *Co. upon Litt. 148.*

* 'Tis not a continuance of the Rent which is extinguished, but it amounteth to a new grant.

1. *Inst. 148.*

If a man make a Lease for life or yeares, reserving rent; and the Lessee surrender part of the Land to the Lessor; in this Case, the rent is not gone, but shall be apportioned. So if the Lessor recovereth part of the land in an Action of waste, or entereth into part for a forfeiture, the rent shall be divided. So if the Lessor grant part of the Reversion to a stranger, the rent shall be apportioned. So if tenant by Knights service devise by his will the Reversion of two parts of his land; in this case the rent shall be divided. *Co. upon Litt. 148.*

7. Where a demand or request, or attornment of a Rent is necessary or not.

AN Action may be brought, or a distresse taken for a rent charge or rent service, without and before any demand made of it. But an Assise cannot

To have an action or distres for any Rent.

be brought for a rent seck and the atrea-
 ges thereof, untill the rent be deman-
 ded. And if by the Deed or Will, by
 which the rent is created to be paid up-
 on the Land, it be set down that the rent
 charge or rent service before a distresse
 be taken must be demanded; in this
 case there need not to be a Demand; but
 if it be payable at another place out of
 the Land, *Contra. Dyer 348. Co. 7. 28.*
Kelm. 153. Co. upon Litt. 144. 202. Co.
6. 56. Seldens Case 17 Car. C. B. If a
 rent be granted with condition that if it
 be Arreare, the Grantee shall distrain; in
 this Case the Grantee need not demand
 it. *Plow. 70.*

To have a Re-
 entric, or No-
 mine pene.

In most places where a common per-
 son would enter into Land upon a con-
 dition for not payment of rent, or will
 have a penalty or *Nomine pene* of a grea-
 ter summe forfeit for not payment of
 the rent being a lesser summe; there must
 be a demand duely made of the rent ere
 he can enter, or have the *Nomine pene*.
Co. upon Litt. 153. 301. 202. Co. 4. 72.
 And this holdeth true though it be not
 expressed in the Deed that it shall be de-
 manded: And albeit no man be upon
 the Land to tender it, and albeit the rent
 be

be payable out of the Land and Coun-
try; and yet if the agreement be expres-
sed, that if the rent be behind, he that is
to have the rent shall enter, or the estate
shall cease without demand: here per-
haps a demand may not be needfull.

Dyer 329. 13. 79. 51. *Co.* 6. 56. *Plom.*
172. 70. *Co.* 10. 129. 2 *H.* 7. 14. Yet I

have seen the report of a Case thus: If
a Lease be made rendring rent, and that
if it be behind, the Lessee shall forfeit
three shillings 4 pence *nomine pene*, that
in this Case there needs no demand as
in the Case of Reentry. *Trin.* 36 *Elid.*
Co. B. Thins Case.

If I devise Land by Will to *J. S.* on
condition he pay 20^{li} a yeare out of it
to *K. L.* at two Feasts; in this Case there
needs no demand. *Dyer* 348. But if one
devise a rent by Will to *J. S.* and willeth
that if it be not paid, the executors or
J. S. shall have the Land; in these Cases
there must be a demand. *Molineux Case*
Pasc. 5 *Jac.* *B. R.*

If a rent be granted with condition to
Reenter, or *Nomine pene* for not pay-
ment; he that is to pay the rent, must
take care to tender it to save the for-
feiture. 2 *H.* 7. 8.

*What demand or tender must be made;
and how; and what shall be said, a good
demand or tender of Rent or not.*

IN all Cases where a request or demand
of Rent is needfull, it must be duely
made in all Circumstances, or it will not
be sufficient to give a man any advan-
tages.

The demand of a Rent seek to inable
an Action must be made thus: After the
rent is due and seisin had of it, the party
to have it, on some body for him must
be upon the principal place in the Land,
the last part of the day of payment: or
if no tender be made of it on that day,
then at any time after the day, and there
demand the rent; and if the Tenant or
some other for him be not there ready
to pay it, this is a deniall in Law, upon
which he may have an assise, and therein
shall recover the rent and atrearages
thereof, and costs and damages. But
if there were a tender by the Tenant, the
last part of the day, and no body to re-
ceive it; in this Case he hath no reme-
die for the present, unlesse he can meet
with the Tenant of the Land in some
part of the Land: And therefore in this

Case

Case the best way is to be on the Land the next day of payment, the last part of the day, and then demand the rent and arrearages thereof; and if no body be there ready to pay it, this is a denial on which he may have an Assise. *Litt.* 235. *Co.* 7. 28. *Co. upon Litt.* 153. 154. A demand to enable a distresse may be made at any time after the day, and is good enough. *M.* 40. 41. *Eliz.* *Stanleys Case.* *Co. upon Litt.* 144. 153.

The demand of a Rent to gain a Re-entrie into Land, or *Nomine pene* must be made thus: First, by and of the right persons, and for this these things are to be known:

1. If a Lease be made for yeares rendring rent on condition, that if it be arrear forty dayes after the day, that the Lessor and his heires shall reenter, and the Lessor demand it and after die; this is a good demand, and his heire shall take advantage by it, and may enter. But if the Lessor die after the day, and then the heire demand it, *Contra.* *D. & St.* 35. 13 *H.* 4. 17.

2. If two make a Lease, rendring rent on condition, that if it be behind and demanded, they shall reenter, and one

of them die, the survivor may demand it. Or if the Lease be made to two on such a condition, and one of them die, the rent may be demanded of the survivor of them; *Bra. 207. 41. Ed. 3. 16.* and accordingly a Tender may be made of rent. And therefore a Tender to one Joyntenant or Copartner, or by one Joyntenant is held to be good. *Bro. Tender. 10. 19.*

3. The party that is to demand, may doe it by his Attorney or servant, as well as by himself.

Secondly, for time, it must be made the last day given for the payment thereof, and the last part of the day so long before the sunne set, and it be dark, that the money to be received may be conveniently numbred by day light, and he must continue his demand till it be night, and the Lessor is not bound to demand at any other time. *Compton Litt. 282. Noy 98. Co. 4. 72. Plow. 72. Dyer 329. 130. Co. 6. 56.* When the Lessee hath two times given him for payment of his rent, as when the Lease is rendering rent at Michaelmas, or within tenne dayes after, or in like manner, in this Case the demand must be made the last
part

part of Michaelmas day, and the last part of the ten dayes. For if the Lessee tender it the first day, and the Lessor be not there, and he tender it not the last day, and the Lessor demand it at this day onely; this is not sufficient, for the Lessee hath an election to pay it on which of the dayes he please. But if the last day be put in the condition, onely provided, that it be behind ten dayes after, the Lessor shall reenter: in this Case it need not be demanded at Michaelmas, but may be demanded the last part of the ten dayes onely, *Perk. Sect. 896. Bha. Tender 41. 2. Henr. 7. 4. Co. 71. 28. 10. 10. 19. 1. Case Super. Littleton 207.* And then and not at any other time the (party that) is to pay the rent is bound to tender it, when he that is to receive it is bound to demand it. *Bro. Tender 23. Co. upon Litt. 211.* But here we must observe that there are foure times of payment of rent. First, voluntary, but not satisfactory, and yet good to some purpose, as if Lessee, Donee, &c. pay the rent before the day; this is good to give seisin to enable him that hath it to bring an Assise. The second time is voluntary, and satisfactory in

in some Cases, as if it be paid the morning of the last day, and the Lessor die before the end of the day; this is good against the heires and executours. The third is the legall and absolute satisfactory time, which is a convenient time before the last instant of the last day, and then it must be tendred. The fourth is satisfactory, but not voluntary, but coercive, and by suit. *Coke 10. 127.*

For Place.

For place, the demand must be made upon some part of the Land, out of which the Rent doth issue, (if no other place be expressed) and upon that part which is most notorious; as at the Porch and fore doore of the Capitall Messuage (if any be) and not at the backe doore, or at another house: And if no house be, then at some gate or stile upon some high way going through the Land; or if one place be as notorious as another, then at either of them, and there, and not elsewhere the Rent must be tendered. And if there be two places of payment, as yielding the Rent at such a stile, or in the Church of Dale or Sale, or in the house, or the like: there demand must be

be made at both, for the Lessee may tender at either at his choyce, and where he may tender, the other must require it. So if it be paying at or in a place, the demand must be at or in the place. And if by expresse agreement it be to be paid at a place out of the Land, the demand must be at the most eminent place there where it is to be paid, and then it need not be demanded on the Land. *Co. upon Littleton* 201. 158. 153. 292. 19. 129. 4. 72. 6. 46. *Dyer* 329. 72. 130. *Noy* 98. And the Lessor is not bound to demand it in any other place, nor is such a demand good. *Bro. Tender* 11. And though the doore of the house be open and the partie that is to demand see him, that is to pay in the house, he need not goe in to demand it, but it is sufficient to doe it at the doore. *Coke super Lit.* 153. And there and not at any other place the party that is to pay the Rent is bound to tender it, where he to whom it is to be paid is to demand it. *Plow.* 172. *Coke upon Littleton* 201. 105. But by agreement of the parties, it may be tendered, and received before the day in any place. *Perk. Sect.* 836, 837, 838. And so perhaps at the day, if the agree-

For Time.

For the Man-
nor.

agreement be made of as high a nature, as the first agreement was.

For the manner of the demand, he must then and there by himselfe or some other for him, make an Actuell or Verball demand of the Rent; and therein it is good to say how much it is, and to set forth his readinesse to receive it after this manner.

Here I demand of 7. s. tenne pound-Rent due to me at the Feast of, &c. for a Messuage, &c. which he holdeth of me by Lease, &c. And there let him remain untill it be so darke, that he cannot see to tell the money. But a demand of more then the Rent, is a good demand of the Rent. *Dyer, 329. 130. 19. 51. Plow. 70. Wy. 98.*

And accordingly, he that maketh tender of Rent, must make a reall tender; and it is not sufficient to doe it in shew onely, for he must prove he had, and tendered so much money as the Rent is.

And if it be to be paid on the Land, it seemeth the Lessor must doe the first Act; that is to say, demand it before the other is bound to pay it; and the other

other is not bound to tender it, till he demand it. But if it be to be paid at a place out of the Land, then the Lessee is bound to doe the first Act: that is to say, tender it at his perill. But it is good in these Cases to doe too much, and to have substantiall witnesses to prove what men doe; *Abundans cautela non nocet.*

And if a demand of Rent be not made for time, place and manner, as is afore-said, it is not good. And therefore, if one make a Lease of a House and divers Lands, and Woods to another for yeares, rendering one hundred pound Rent at Michaelmas: provided, that if the Rent be behinde tenne dayes after Michaelmas, the Lessor shall Reenter, [or shall forfeit ten pound, *Nomine pene*;] In this Case the Lessor, if he will take advantage of the condition, must come the last part of the last of the ten dayes, time enough before Sunne set, to tell one hundred pound, to the House, and there demand the Rent, and continue there till Sunne set, ready to receive the money. *Bro. Disseisin* 69.

And yet by agreement of the parties,
it

it may be otherwise; for *Modus & conventio vincunt legem. Et, volenti non fit injuria.* Coke 7. 28. 25. 40. Dyer, 78. 31. Brooke 68. And in all these Cases, where a Tender is requisite, and legally made; it giveth as much advantage to him that doth tender the Rent, albeit the partie refuse it, as if he did accept it. Co. upon Litt. 207. 206. 209.

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FINIS.

Ex. J. M.
5/9/13

